

1 IN THE UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF MARYLAND

3 UNITED STATES OF AMERICA, )  
4 Plaintiff, )  
5 vs. ) ) CRIMINAL NO.: JKB-16-0363  
6 GERALD JOHNSON, et al., ) ) Jury Trial: Volume 25  
7 Defendant. ) )  
8 \_\_\_\_\_ )

9 Transcript of Proceedings  
10 Before the Honorable James K. Bredar  
11 Tuesday, January 23rd, 2018  
12 Baltimore, Maryland

13 For the Plaintiff:

14 Peter J. Martinez, AUSA

15 Christina A. Hoffman, AUSA

16 For Defendant Gerald Johnson:

17 Paul F. Enzinna, Esquire

18 Jeffrey B. O'Toole, Esquire

19 For Defendant Kenneth Jones:

20 Alan R.L. Bussard, Esquire

21 For Defendant Marquise McCants:

22 John R. Francomano, III, Esquire

23 \_\_\_\_\_  
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## 1 P R O C E E D I N G S

2 THE COURT: Good morning.

3 Mr. Enzinna, are we ready for the jury?

4 MR. ENZINNA: Yes, Your Honor.

5 THE COURT: Okay. Let's bring them in.

6 (Jury entered the courtroom.)

7 THE COURT: Good morning, ladies and gentlemen.

8 JURORS: Good morning.

9 THE COURT: We are ready to start our trial day. We  
10 now turn to Mr. Enzinna, counsel for Mr. Johnson.

11 Mr. Enzinna, do you wish to make a closing argument?

12 MR. ENZINNA: Yes, Your Honor. Thank you.

13 THE COURT: You may proceed.

14 MR. ENZINNA: Good morning, ladies and gentlemen.

15 JURORS: Good morning.

16 MR. ENZINNA: I'd like to start by echoing  
17 Ms. Hoffman and thanking you for your service on behalf of  
18 myself, my colleague Mr. O'Toole, and my client Gerald  
19 Johnson. One of the things that makes our country great is  
20 the rights we enjoy and the ways we protect those rights. And  
21 one of the important ways we protect our rights and freedom is  
22 through the trial by jury. The judge yesterday called you  
23 essential workers, in contrast to the government shut down,  
24 and I think that's an apt word.

25 The government has charged my client Gerald Johnson

1 with a very, very serious crime. There aren't anymore serious  
2 crimes. And they want to take away his freedom. But before  
3 they can do that, the constitution requires that they submit  
4 the evidence to an impartial jury of citizens like yourselves,  
5 Mr. Johnson's peers, who will determine whether the government  
6 has met its burden to prove beyond a reasonable doubt that  
7 Mr. Johnson, in fact, committed the crimes the government  
8 accuses him of.

9 As I said, the right to a trial by jury is a  
10 wonderful thing. The problem is it imposes some costs. And  
11 unfortunately the cost is being borne in this case by you all.  
12 And the costs are pretty significant in this case. This was  
13 an unusual case, we've been here more than two months. In  
14 fact, a little more than two months. There have been dozens  
15 of witnesses, hundreds of documents, pieces of evidence, some  
16 of that evidence was disturbing, shocking, even frightening.  
17 But through it all you showed up every day, you paid  
18 attention, you took notes, and you did an excellent job and we  
19 thank you for that.

20 Now we turn to the second piece of your job. You're  
21 going to deliberate on the case. That's an interesting word,  
22 "deliberate." In fact, you might say it was chosen very  
23 deliberately. You make a lot of decisions in your life, you  
24 don't deliberate about all of them. To deliberate means to  
25 consider something very carefully. And we have no doubt that

1 you will.

2 This is a multi-defendant case and that makes it  
3 particularly complicated because there are three defendants.  
4 And you need to remember that you are not here to render a  
5 verdict as to Gerald Johnson, Kenneth Jones, and Marquise  
6 McCants. You're here to render three separate verdicts; one  
7 verdict as to Mr. Johnson, one verdict as to Mr. Jones, and  
8 one verdict as to Mr. McCants. You must consider them  
9 separately. You must consider the evidence against them  
10 separately.

11 Now, when I stood up here in the opening, some of  
12 you may remember that, two months ago, I told you that Gerald  
13 Johnson would testify in this case. He didn't have to, but he  
14 did. And he was -- he went on the stand and he told you that  
15 he sold drugs. I told you he would tell you that and he did.  
16 And in a lot of ways he explained how he survives in  
17 Greenmount. He talked about selling drugs, everybody in that  
18 neighborhood sells drugs, he talked about the parties he  
19 organizes, and he talked about his dreams, about becoming a  
20 rapper and becoming famous and making music. In a lot of ways  
21 this case is about -- the question in this case is, who is  
22 Gerald Johnson? Is he a neighborhood drug dealer? Or is he,  
23 as the government claims, some kind of gangster overlord?

24 Now, as I told you in my opening, the government  
25 would put on evidence that Mr. Johnson broke laws, including

1 laws against selling drugs and laws against assault. You  
2 remember, he was convicted of an assault for shooting at those  
3 two people. But Mr. Johnson -- those aren't the crimes  
4 Mr. Johnson was charged with. He was charged with very  
5 particular crimes. So let's talk about what those crimes are.

6 Mr. Johnson is charged with five counts in this  
7 case, and I've grouped them here. You see at the top there  
8 are the racketeering counts, Counts 1, 3, and 4. Conspiracy  
9 to participate in a racketeering enterprise, conspiracy to  
10 commit murder in aid of racketeering, that's the Moses Malone  
11 murder, and murder in aid of racketeering, that's also the  
12 Moses Malone murder. There's a separate drug charge, Count 2.  
13 He's charged with conspiracy to distribute and possess with  
14 intent to distribute controlled substances. And finally,  
15 there's a firearm charge. He's charged with being a felon in  
16 possession of ammunition.

17 You've heard the evidence. You've heard the  
18 evidence on the firearm charge. I'm not going to spend a lot  
19 of time talking about it today. And I'm going to return to  
20 the drug charge later on, but I want to start with the  
21 racketeering charges because those are really the center of  
22 this case. The racketeering charges all have one thing in  
23 common, they require proof of a relationship to an enterprise.

24 Ms. Hoffman talked a little bit about what an  
25 enterprise is yesterday and we'll get to that. But if you

1 look at them, Count 1 requires proof beyond a reasonable doubt  
2 that Mr. Johnson knowingly and willfully became a member of an  
3 enterprise -- I'm sorry, knowingly and willfully joined an  
4 agreement to participate in the affairs of an enterprise.

5 Counts 3 and 4, the Moses Malone murder counts, require proof  
6 that that murder was committed to maintain or increase his  
7 position in the enterprise. So in all of these counts the key  
8 question is, was Gerald Johnson a member of the BGF Greenmount  
9 Regime?

10 An enterprise is a group of people associated for a  
11 common purpose with an ongoing organization, formal or  
12 informal, the personnel in it function as an ongoing unit, and  
13 it has an effect on interstate commerce. Those are the  
14 requirements.

15 Now, the government's version in this case is  
16 that -- this is the government's version of Gerald Johnson's  
17 relationship to the enterprise: They say he was a member of  
18 YGF and that as a member of YGF, the Young Guerilla Family, he  
19 authorized the murder of Gregory Rochester, also known as  
20 Craig Mack. And they say he transitioned, graduated from  
21 Young Guerilla Family to BGF. That happened sometime early in  
22 2007. Or they claim it happened. He became, quote-unquote,  
23 "C of the Greenmount Regime," and as such, he presided over a  
24 BGF meeting after the murder of Henry Mills in 2011, that he  
25 ran BGF drug shops, and that he green-lighted the murder of

1 Moses Malone.

2 Let's look at the acts Mr. Johnson is actually  
3 charged with. Now, this chart -- the first thing you need to  
4 look at on this chart is the top line where you see a purple  
5 and black oval, two ovals, one says YGF, one says Black  
6 Guerilla Family. And you see that they come up against each  
7 other in 2007. That's the government's argument in this case,  
8 that the Young Guerilla Family morphed into the Black Guerilla  
9 Family. But I would submit to you that the evidence shows  
10 that what happened in this case was that there was a Young  
11 Guerilla Family, and we'll talk about exactly what that was in  
12 a minute. But that what happened then is that the Black  
13 Guerilla Family -- the evidence is that the Black Guerilla  
14 Family shut it down and some of those people joined Black  
15 Guerilla Family, not all of them did. In fact, Mr. Gray  
16 testified that one of them was killed. But it was a separate  
17 organization that they had to make an affirmative effort to  
18 join. And Mr. Johnson did not do that.

19 Now let's look at the events below the timeline.  
20 There are different colored boxes here and the different  
21 colors mean different things. If you look at the blue boxes,  
22 those are acts that Mr. Johnson is alleged to have committed  
23 with other members of YGF or BGF.

24 It's alleged that from 2005 to 2007 he supplied  
25 drugs to other members of the YGF and that he participated in

1 meetings at their quote-unquote "stash house." It's alleged  
2 that he authorized the murder of Craig Mack in January of '07  
3 while YGF was still operating. It's alleged that in June 2011  
4 he presided over a meeting in the park after the Henry Mills  
5 murder. And it's alleged in 2013 he paid tribute to Mr. Gray  
6 in the form of money and cocaine. And in April he  
7 quote-unquote "green-lighted" the Moses Malone murder.

8 Shortly, after the Moses Malone murder, it's alleged  
9 that he and Mr. Jones confronted someone about snitching. And  
10 then finally, in August of that year, it's alleged that he  
11 agreed to supply drugs to Wesley Brown in jail. Those are the  
12 acts he's alleged to have committed with other gang members.

13 Now, if you look at these yellow boxes, those are  
14 the other acts he's alleged to have done that didn't involve  
15 other gang members. In July -- I'm sorry, in December of 2006  
16 he attempted to shoot the testers, the two people who lived in  
17 his house. And like I said, he was convicted of assault for  
18 that. In September of '07, he distributed cocaine base to the  
19 undercover officer. You heard the undercover officer testify.  
20 And in November 2015, he distributed cocaine again, that's  
21 Mr. Stokes. In the fall of 2015 sometime, he supposedly  
22 offered to sell Mr. Stokes an assault rifle. Finally, in June  
23 of 2016, he was arrested and the police found ammunition in  
24 his trunk.

25 Now, the rest of the boxes on this page, if you look

1 up at the top here in the corner, there's an orange box and a  
2 gray box. Those are Instagram posts and text messages. I'm  
3 sorry, one of those Instagram posts should say Facebook.  
4 That's the social media. We saw a lot of Mr. Johnson's social  
5 media in this case and the government alleges that that's  
6 evidence that he was a member of BGF, and I'll come to that  
7 later on. And then down below you see the rap videos. Again,  
8 the government argues that those rap videos were part and  
9 parcel of his supposed membership in this enterprise. And  
10 we'll talk about that later. But that's the framework I want  
11 you to have in mind as I go through the rest of my closing  
12 argument.

13 Now, the first question is, what is the enterprise  
14 in this case? YGF, the Young Guerilla Family was not an  
15 enterprise. You heard the evidence. Mr. Meadows, the  
16 government's witness, testified it was a bunch of kids who  
17 grew up in the neighborhood. Every witness who testified said  
18 it was a bunch of kids who called themselves YGF. They looked  
19 around their neighborhood, just like any kids do, and they  
20 thought, who are the cool people around here? Some kids in  
21 some neighborhoods play army or play cops or play cowboys or  
22 whatever. The cool people in Greenmount were BGF, and these  
23 kids wanted to be like BGF and they called themselves YGF.

24 But they had no meetings. Remember Mr. Meadows  
25 testified about the supposed meeting, the second meeting about

1 the murder of Gregory Rochester. What he said was, well, it  
2 was different people, different individual meetings. It  
3 sounds like a bunch of people milling around in the park  
4 saying, hey, did you hear this, did you hear that. It was not  
5 an organized meeting.

6 YGF had no organization or structure. The  
7 government showed you a little org chart of YGF, which the  
8 government invented. There is no organization in YGF. It had  
9 no rules, had no paperwork, no oaths, no missions, no dues,  
10 and it had no effect on interstate commerce. Was there any  
11 evidence that YGF had any effect outside the Greenmount  
12 neighborhood?

13 Now, BGF, the Black Guerilla Family, might have been  
14 an enterprise. But Gerald Johnson did not join the Black  
15 Guerilla Family. Now, the government has -- there are five  
16 kinds of evidence in this case. I'm going to talk about each  
17 of them separately. And the government wants you to find,  
18 based on these five categories of evidence, they want you to  
19 find beyond a reasonable doubt that Mr. Johnson joined the  
20 Black Guerilla Family.

21 The first category is gang signs and symbols. We  
22 heard a lot about the BGF rules. Ms. Hoffman showed you  
23 yesterday that BGF rules that were recovered from certain  
24 people's places where they lived. Nothing like that was  
25 recovered from Mr. Johnson. The closest the government came

1 was a photograph that they happened to find in, I believe it  
2 was Wesley Brown's house during a search that was tucked  
3 inside Mr. Brown's copy of George Jackson's memories. And the  
4 government would like you to find that because Mr. Brown put  
5 that photograph inside that book, Mr. Johnson is a member of  
6 BGF.

7 You heard a lot of evidence that to get into BGF you  
8 had to take an oath and you had to perform a mission. There  
9 was not any evidence in this case that Mr. Johnson performed a  
10 mission to get into BGF or that he ever took the oath. Nobody  
11 testified that they ever heard Mr. Johnson take the oath. I  
12 think the most revealing evidence in this was Lamontae Smith.  
13 Remember Lamontae Smith said he got out of prison and he came  
14 to Greenmount and he didn't know anybody. He wandered around,  
15 he ran into people, and he ran into Cakes and Carrdai. And  
16 they spit the oath to him, so he thought, okay, I'm here with  
17 my brothers, my comrades, I know these guys are BGF, so I'm  
18 good. They introduced him to other people, and he said, I met  
19 Norman Handy, Norman Handy spit the oath to me. He met Montel  
20 Harvey, and he said, Montel Harvey spit the oath to me. And  
21 we asked him, did Gerald Johnson spit the oath to you? And he  
22 said no, he didn't. Remember Mr. Johnson's rap video where he  
23 says, "I ain't spit the oath."

24 Government also points to Mr. Johnson's tattoos. He  
25 has the tattoo of the word Jamaa on his forearm. Jamaa, as we

1 know, is a Swahili word that means family. The phrase -- and  
2 I'm going to butcher this, the phrase Eusi Gayedi Jamaa means  
3 Black Guerilla Family in Swahili. Mr. Johnson told you what  
4 the word Jamaa means. He told it's the name of his record  
5 label. There was talk about that record label yesterday, in  
6 particular, that it was not incorporated. But remember what  
7 Agent Hayden said about that. He checked to see if this  
8 record label was incorporated, but did he ask anybody, all the  
9 subjects of his investigation, about the record label? He  
10 said he didn't.

11 Now, let's talk about the tattoos Mr. Johnson  
12 doesn't have. He has no 276, no George Jackson, no gorilla,  
13 no cross, sword, and rifle, no dragon. Now those are the  
14 tattoos that are arguably specific to Black Guerilla Family.  
15 Jamaa is a Swahili word, it means family. These other  
16 tattoos, particularly, George Jackson or 276, that's pretty  
17 specific. Mr. Johnson doesn't have those.

18 You remember Mr. Martinez when he was questioning  
19 Mr. Johnson, talked to him about what he called  
20 misunderstandings. And he showed all these cases where he  
21 thought that it was, isn't it funny that you have this thing  
22 that is almost like BGF, but you say it's a misunderstanding?  
23 But ladies and gentlemen, I ask you to look at that question  
24 from the point of view of the burden of proof in this case.

25 Someone might have tattoos on their body and they

1 might have -- be covered with tattoos; 276, George Jackson,  
2 gorillas, et cetera, et cetera, which makes you think, I feel  
3 one way about whether that person is a member of BGF. Or a  
4 person might have no tattoos at all and you might say, well,  
5 that's not really evidence that he was. Most people are  
6 somewhere in the middle there; right? Where's Gerald Johnson  
7 in the middle there? He has a Jamaa tattoo, is that beyond a  
8 reasonable doubt that he's a member of BGF?

9 There's also evidence that Mr. Johnson has a tattoo  
10 on his back -- oh, let me go back I apologize. The government  
11 made much of the fact that the letter L is tattooed at the end  
12 of Jamaa. Well, it's sort of at the end of Jamaa. It's  
13 pretty obvious that it's not part of that original tattoo.  
14 It's in capital letters, which would -- if you were trying to  
15 make it say Jamal, it's odd that you would make it in capital  
16 letters. Mr. Johnson testified about what that tattoo means.  
17 I'll leave it to you to decide.

18 There's evidence about Mr. Johnson's angel of death  
19 tattoo. The government of course put on evidence that the  
20 death angel was a phrase used by BGF. Was there evidence that  
21 Gerald Johnson was ever considered a quote-unquote "death  
22 angel" in BGF? Or is this tattoo explained as Mr. Johnson  
23 told you, by the fact that Ja Rule, who is a pretty famous  
24 rapper, has the same tattoo on his stomach?

25 We heard a lot about the gorilla shirts. Now, this

1 picture is -- in a way it's very emblematic of this case.  
2 Gerald Johnson is a large man. He's 6'6", I believe, 300  
3 pounds plus. He's a presence. He's a charismatic man. He's  
4 a rapper. He's outgoing. He knows everybody. And he's in a  
5 neighborhood where a lot of people belong to BGF, and here he  
6 is with some people who the government says are BGF. And they  
7 all have on these gorilla shirts, and the government says,  
8 see, he's got a gorilla shirt on, that means he's Black  
9 Guerilla Family.

10 Look carefully at this picture, what's different  
11 about Gerald Johnson? You see on the left is Stimey and on  
12 the right is, I think it's Reef, I'm not sure. But look at  
13 their T-shirts, what's on the front of their T-shirts? Both  
14 of them put a picture of George Jackson on the front of their  
15 shirts. George Jackson, of course, the founder of BGF. Mr.  
16 Johnson doesn't have that. The government also argued that  
17 Mr. Johnson wore a black bandana and that that was a BGF  
18 symbol. You see here on the right a picture of Mr. Johnson  
19 wearing a black bandana on the cover of this record, of his  
20 records, the Jamaaville Reloaded.

21 There's also a picture the government introduced on  
22 the left here, a picture of, I believe that's Bank standing  
23 next to Mr. Johnson. There's a black bandana in Mr. Bank's  
24 pocket. That black bandana is not on Gerald Johnson's head,  
25 it's in Mr. Bank's pocket.

1                   With respect to the cover of the recording, Mr.  
2 Johnson told you how that got done, that he was not -- he did  
3 not create that, he didn't put the gorilla on it. He did put  
4 the black bandana on his head, but I ask you, is that a symbol  
5 of being in Black Guerilla Family?

6                   Look at these photographs, here's Mr. Johnson in a  
7 white bandana. Here he is in a white bandana on the left, a  
8 red bandana on the right. Here he is, a white bandana on the  
9 left, a red bandana on the right, so there is no question that  
10 Mr. Johnson wore bandanas. He told you his head was simply  
11 too big to wear a hat. But he wore all kinds of bandanas.  
12 And again, this is a case where the government wants to argue  
13 that the fact that Mr. Johnson did something that was also  
14 done by Black Guerilla Family members makes him a member of  
15 the Black Guerilla Family. And that's not enough. The  
16 question is, did he willingly join the Black Guerilla Family?

17                  The crossed arms symbol is another piece of that  
18 where the government says this is a Black Guerilla Family  
19 symbol. I don't know if you've seen that anyplace else, there  
20 was some evidence here about that and about what it meant.  
21 Remember Mr. Johnson told you about the organization called  
22 Protect the Family. See on the left, the gentleman wearing  
23 the blue hat with the sign that says PTF, Protect the Family,  
24 with the crossed chains and the lock. Mr. Johnson explained  
25 to you what that meant. You see on the left he's got the

1 T-shirt on with the same symbol in red.

2 The next category of evidence that the government  
3 wants you to look at is Mr. Johnson's cell phone. Remember  
4 Mr. Johnson's cell phone was seized and extracted and a lot of  
5 things were put on from his cell phone. Let's look at those  
6 things. This is the list of contacts that the government  
7 pulled out of Mr. Johnson's phone. Now, remember there were  
8 at least 3,000 contacts in that phone the government pulled  
9 out. I don't know how many this is, maybe 60, 70. And you  
10 see they moved certain ones of these up to the top. You see  
11 the top five are numerically out of order. And those are the  
12 contacts that the government thought were the closest they had  
13 to evidence in Mr. Johnson's cell phone of his contact with  
14 the Black Guerilla Family.

15 Now, who are these folks? First one, Chrisha West,  
16 remember who Chrisha West was? It's Norman Handy's mother.  
17 Rondo, there was evidence that Rondo was a Black Guerilla  
18 Family member. But again, I submit to you, if you live in  
19 Greenmount, you know Black Guerilla Family people. It doesn't  
20 make you a member of Black Guerilla Family. The next two  
21 people, T. Broski and Tudda. There was evidence that they  
22 were subjects of Agent Hayden's investigation. Was there  
23 evidence that they were Black Guerilla Family members?

24 Also, look at the top two contacts under times  
25 contacted. How many times -- those are the two people who

1 arguably were closest to the Black Guerilla Family, how many  
2 times did Mr. Johnson contact them? There's a dash there.  
3 Now, Agent Hayden testified that, well, that might mean an  
4 infinite number of contacts. Again, Ms. Hoffman told you to  
5 use your common sense, please do.

6 Let's look at Mr. Johnson's text messages.

7 Government showed you a lot of those as well. And Agent  
8 Hayden testified about the keyword searches he performed.  
9 Remember he said he looked for Jamaaville and so on and so  
10 forth. But where are the text messages that refer to BGF, or  
11 Jamaa or LLTG or anything like that? They certainly had the  
12 power to keyword search these texts for that. What these  
13 texts show, and you know, I won't coat it, they show  
14 Mr. Johnson talking to people about the distribution of  
15 narcotics, but they don't show him talking to those people  
16 about distributing narcotics as a member of Black Guerilla  
17 Family, and that's what he's charged with here.

18 Here's some more evidence from the cell phone.  
19 Remember this picture? The government showed you this and  
20 said, look, there's Porky on the left. And Porky was a member  
21 of BPD, so this means Gerald Johnson was a member of BGF.  
22 Now, that's not Porky, we know that now. And I'm going to get  
23 this wrong, I can't remember if the guy on the right is -- I  
24 can't remember. He's a famous rapper, so the government got  
25 it wrong.

1                   And you know, that's an important point here, ladies  
2 and gentlemen, in a -- well, let me show you this too. This  
3 next video Mr. Johnson has a pile of money in his lap,  
4 remember that, that money? And the police officer testified  
5 about Mr. Johnson having counterfeit money. Let's look at  
6 that money. You see that money, you see how the 100 is  
7 backwards on it? Is that really counterfeit money or is it  
8 play money? Mr. Johnson said, I use this in my videos. And  
9 when I asked Agent Hayden about that, he couldn't even tell if  
10 this was real or counterfeit money.

11                  Now, as I said, Mr. Martinez said to Mr. Johnson,  
12 well, you're arguing there's a vast conspiracy and the police  
13 are lying and they're out to get you, they're framing you.  
14 Ladies and gentlemen, we're not arguing that the police are  
15 lying, that they deliberately went out to frame Mr. Johnson.  
16 But the police got some things wrong. They clearly did. And  
17 you know, there's a saying, I'm sure you've heard it, to a  
18 hammer the whole world looks like a nail. And after a while,  
19 once the government started to believe that Mr. Johnson was in  
20 BGF, everything started to look like he was a member of BGF.

21                  And some of the things weren't even looked into,  
22 like for example, when I asked Detective Hayden about the  
23 Facebook posts, I asked him do you recognize that, did you  
24 search that, did you determine if those were the lyrics from a  
25 rap song, and he said no, I didn't bother. Even after

1 Dr. Nielson got up on the stand and testified about how he did  
2 exactly that and how he went to a website that he identified  
3 and said you can search rap lyrics there. Did the government  
4 bother to do that?

5 There's also a lot of evidence from Mr. Johnson's  
6 social media page. Well, the social media evidence is  
7 interesting because there were a number of pictures of  
8 Mr. Johnson with Black Guerilla Family members, or pictures of  
9 people who were allegedly in the Black Guerilla Family and the  
10 government showed you all those. Remember the testimony was  
11 that these were a small fraction of the photographs on  
12 Mr. Johnson's cell phone.

13 Now, as I said, Mr. Johnson was in this neighborhood  
14 and he was a presence in this neighborhood. You saw the  
15 videos, you saw the "Welcome Home" video. He was somebody  
16 that people wanted to be around, that people came to. He knew  
17 everybody in the neighborhood. He knew the Black Guerilla  
18 Family members, he knew the non Black Guerilla Family members.  
19 Now, the pictures of him with people who were not in Black  
20 Guerilla Family were not in evidence and they disappeared from  
21 his website, from his Facebook page.

22 Now, there's also this text on the left where it  
23 says Jama, J-a-m-a, and it says deleted by user. So what the  
24 government asks you to believe from that is that Mr. Johnson  
25 posted the word "Jama," misspelling it, and then deleted it

1 because he thought that was -- that would get him in trouble,  
2 would reveal he was a member of BGF. Now, again, ladies and  
3 gentlemen, use your common sense. Does that make any sense?  
4 There were plenty of things on the social media websites or on  
5 Mr. Johnson's social media accounts that the government argues  
6 connected him to BGF. Why weren't all those deleted? And why  
7 would he make a post that just says "Jama," misspelling it?  
8 Is it more likely that something else happened here?

9 There's a picture on the right, the not guilty  
10 picture. And remember that it talked about -- underneath that  
11 it's very hard to read, but it talks about Mr. Cornish and  
12 compares him to Sammy the Bull and has the rat emojis. And  
13 the government says, see, that's Mr. Johnson trying to  
14 intimidate witnesses and calling him out for being a snitch.  
15 You know, I don't think it's a mystery that everybody in that  
16 neighborhood knew about Mr. Brown's court case and knew that  
17 James Cornish testified against him and talked about the fact  
18 that Mr. Cornish snitched. Mr. Johnson talked about it.  
19 Maybe Mr. Johnson was angry at Mr. Cornish. Mr. Brown was a  
20 friend of his and he didn't think Mr. Cornish should have  
21 quote-unquote "snitched." But again, is this a post by a  
22 criminal overlord trying to intimidate witnesses, or is it  
23 simply somebody reflecting what's happened in the  
24 neighborhood?

25 Let's talk about the rap videos. Now, I told you at

1 the beginning of the case that the government was going to  
2 play these videos to you, and I also told you I don't know  
3 what your taste in music is, but these videos are not for  
4 everybody. And they are a bit jarring to look at them if you  
5 aren't familiar with that genre. There's a lot of talk about  
6 shooting and snitching and guns and brains and a lot of things  
7 in there.

8 But Dr. Nielson came in and he explained to you  
9 about the genre of hip hop and rap music, which is a worldwide  
10 phenomenon. It's the most popular type of music in the world  
11 today. And it's something that's unfamiliar to us, but he  
12 explained exactly what was going on in those videos. Like for  
13 example, you remember the video of Mr. Johnson rapping,  
14 holding a bottle of tequila, red glasses on, his hair tied up,  
15 black leather jacket and talking about shooting people and  
16 running their mouths and things like that, looking out of  
17 control. And people thought, holy cow, I mean, when you see  
18 that video the first time, it's a little scary.

19 But then we showed you the video of -- remember the  
20 two guys rapping, the two guys in the rap battle and how they  
21 were yelling at each other and threatening each other and  
22 pretending to shoot each other, that's what the genre is and  
23 that's what Mr. Johnson was doing. Remember in that rap video  
24 you saw Mr. Johnson in that video, remember that? He was  
25 standing behind those rappers with a big smile on his face

1 because this is what Mr. Johnson does, he entertains, he gets  
2 people together, he's a -- well -- prosecution wants you to  
3 believe that these rap videos are documentaries, that they are  
4 really either documentaries, a film of exactly what was  
5 happening or confessions, or that they were weapons used by  
6 Mr. Johnson as a criminal overlord, that he was trying to  
7 intimidate witnesses.

8 Now, you saw the "Welcome Home" video where he talks  
9 about Christopher Meadows, and he talks about James Cornish  
10 testifying against him. And you saw him standing there in his  
11 pajamas bottoms saying, you know what you did, you know what  
12 you did. Mr. Meadows got up on the stand and he was asked,  
13 how did you feel when you saw that, what was going on? And he  
14 said, well, he was calling me out for snitching. Did he say,  
15 I was intimidated, I was scared, I thought someone was going  
16 to kill me, I thought somebody was going to harm me? No  
17 Mr. Johnson is standing there in his pajamas bottoms calling  
18 him a weirdo. How intimidating is that?

19 Government also argues that Mr. Johnson used these  
20 videos to exert his control over the gang and to boost his  
21 standing in the gang. Again, you saw the "Welcome Home"  
22 video, you heard the people who testified, they said that  
23 wasn't choreographed, we were just all hanging out and some  
24 guy came up with a camera and said hey, let's film it and they  
25 did. And you also heard him say in there, "I ain't spit the

1 oath."

2 You also heard him say in the 24th and Barclay  
3 freestyle, remember the government talked about this video a  
4 lot, where he said, "them BGF," and put his finger to his  
5 nose. And the government said, see, he's talking about BGF  
6 and warning people to be quiet. What did he say? He said  
7 "them BGF," did he say "we"? Was he trying to excerpt his  
8 control or boost his own standing in the gang? Dr. Nielson  
9 told you, he's seen plenty of videos where people do exactly  
10 that. And this is totally inconsistent. He's talking about  
11 BGF as something separate from him. That's not boosting his  
12 standing in the gang.

13 Now, I want to get to the centerpiece of the  
14 government's case. The BGF witnesses. Ms. Hoffman talked  
15 yesterday about the courage of the witnesses who came forward  
16 in this case, as if these witnesses were some kind of heroes.  
17 I want to talk about each of them in detail and I want you to  
18 decide, was it courage that brought them in to testify, are  
19 they heroes?

20 Let's start with Michael Gray. Mr. Gray told you at  
21 17 he received an eight-year sentence for robbery with a  
22 deadly weapon, he was paroled, but soon returned to prison for  
23 attempted murder with a 12-year sentence. He stabbed another  
24 inmate in prison. He said he didn't care if the guy died or  
25 lived. He said he got away with it. He was one of the

1 original members of BGF in Maryland and he was the  
2 quote-unquote "Hodari," a citywide leader. He said he  
3 personally green-lighted 30 to 40 hits. He said he ordered  
4 YGF, the Young Guerilla Family, to become BGF and he ordered  
5 one of the members killed when he quote-unquote "bucked."  
6 Now, was there any evidence that any YGF member was ever  
7 killed for quote-unquote "bucking"?

8 He also testified he had no remorse over that  
9 murder, whether or not it happened, and was never charged with  
10 it. And he told -- well, the evidence is clear that he lied  
11 to the prosecutors because he wanted to avoid testifying. He  
12 told them, I wasn't a BGF leader. He said -- and then he  
13 said, well, I wasn't the BGF leader over everybody, I was just  
14 the leader in the city, I was just the Hodari, I wasn't the  
15 whatever, which is kind of like saying, I'm not the leader --  
16 I'm not a leader of the United States because I'm the vice  
17 president, I'm not the president.

18 Now, that's sort of like when Ms. Hoffman talked  
19 yesterday about Mr. Meadows when he testified. Remember, he  
20 went in the first time and met with the police and talked  
21 about the Gregory Rochester murder. And he said that Slay and  
22 Foo committed the murder and that they were told to do it by  
23 the Lanvale and Barclay group. Six months later he went in  
24 and he said, oh, actually it was Gerald Johnson who told them  
25 to do it, and actually, Donatello Fenner was part of the

1 shooting too. And Ms. Hoffman said, well, he -- at the first  
2 interrogation he didn't realize that they wanted to know who  
3 ordered it, they only asked him who did the shooting. Is that  
4 plausible? Does that make sense? Especially when they asked  
5 him at the end of the interview, is there anything else you  
6 can tell us about this interview? Is it sensible for someone  
7 in that position to think, well, I know who ordered it, but  
8 they're obviously not asking me that? Of course they were  
9 asking him that.

10 Mr. Gray pled guilty to racketeering conspiracy in  
11 2015. He's cooperating in an effort to reduce his sentence.  
12 He said he is testifying to help himself and for no other  
13 reason. I'll leave it to you to decide how much of a hero is  
14 he is.

15 Brian Rainey testified. He's currently incarcerated  
16 for his second armed robbery conviction. He too is an  
17 original member of BGF in Maryland. Talked about drugs,  
18 prostitution, extortion, and hits in prison, said he assaulted  
19 20 or 30 inmates and stabbed 5 or 10, never prosecuted for any  
20 of them.

21 What else did he tell us? He said BGF is  
22 opportunistic, he said it's everybody for himself. He was an  
23 informant for DEA while he was a BGF member and he says he has  
24 23 years remaining on a 30-year sentence for armed robbery.  
25 He's 49 years old now, that means he's in prison until he's

1 72, and he's testifying here to reduce his sentence. Again,  
2 is he a hero?

3 Christopher Meadows. Christopher Meadows is an  
4 important witness in this case because Christopher Meadows  
5 is -- Christopher Meadows's testimony is the only evidence  
6 that Gerald Johnson had any involvement in the murder of  
7 Gregory Rochester. And as I already told you, the first time  
8 he was asked by police, he didn't say that Gerald Johnson  
9 ordered it, he said Lanvale and Barclay ordered it. Only six  
10 months later that he suddenly remembered that Gerald Johnson  
11 ordered it.

12 Troy Kellam testified. You remember Troy Kellam,  
13 convicted of possession with intent to distribute three times.  
14 Pled guilty to murdering George Nealy in 2015. George Nealy  
15 he said was like a brother to him. His father, Nealy's  
16 father, was Kellam's mentor. Nevertheless, Kellam shot Nealy  
17 four times in the head at point blank range on Father's Day.  
18 And why did he do it? He did it because he was ordered to.  
19 And he said if he refused, he knew that his life would not  
20 have been worth very much.

21 He lied to stay out of prison on that murder. He  
22 accused one of his fellow BGF comrades. Now he's awaiting  
23 sentencing on murder and racketeering as a career offender and  
24 he testified for leniency. Now, if Troy Kellam can lie to the  
25 police and tell them that another member of his BGF group

1 killed Nealy, and if he can kill Nealy, his best friend, like  
2 a brother to him, if he can in cold blood go out and shoot him  
3 four times in the head because if he didn't his life wouldn't  
4 be worth much, what's his life worth if he goes to prison for  
5 the rest of his life? How much easier is it to say that  
6 Gerald Johnson is a member of BGF than it was to kill George  
7 Nealy?

8 Joseph Davis testified. Again, he's awaiting  
9 sentence. He spent half his life in prison. He's  
10 cooperating.

11 Michael Gwaltney testified. Multiple drug and  
12 robbery convictions. He also is awaiting sentencing as a  
13 career offender and he said he's tired of being in prison and  
14 he's cooperating to get a lower sentence.

15 Lamontae Smith testified. Remember he lied to the  
16 police about who shot him and about his membership in BGF. He  
17 joined BGF when was 15 while he was in prison for assault. He  
18 admitted to using a gun in robberies. He admitted to being  
19 with Hood when he shot Ben and was never charged for that. He  
20 changed his testimony about who killed Country. Remember he  
21 told the grand jury that he was told that -- he said he told  
22 the grand jury that Hood told him that Ben shouldn't have  
23 killed Country, but here he said Slay killed Country, leaving  
24 out the part about Ben, at least on direct.

25 Now, that brings me to an important point, ladies

1 and gentlemen. When you're considering these witnesses, and  
2 in fact any witnesses, you have to ask yourself how credible  
3 are they? How do you judge that? There are a number of ways  
4 to judge that, and you know them. You look -- do they have a  
5 motive to testify falsely? Are they biased? What's their  
6 perception? Were they there when this thing happened? Or are  
7 they there saying somebody told somebody who told somebody?  
8 What's the level of detail?

9 I mean, can they tell you -- if they say, yeah, he  
10 was a member of BGF, that's one thing. But if they say, he's  
11 a member of BGF, I saw him at a meeting on 24th Street on  
12 February 2nd, that kind of detail suggests someone is telling  
13 the truth. And what was their attitude? Did their attitude  
14 change when they were testifying on direct and telling the  
15 story they were prepared to tell, as opposed to when they were  
16 cross-examined and were asked questions about that, did their  
17 attitude change?

18 Let's go on to Harry Caesar. Harry Caesar also is a  
19 very important witness in this case. In 2002, he pled guilty  
20 to attempted murder. After his release, he worked as an  
21 informant. But while he was working as an informant, he sold  
22 drugs and kept the money, carried a firearm, didn't tell the  
23 government he was doing that. He talked about how his  
24 relationship with Moses Malone, how he looked out for Moses  
25 Malone, and how he was upset about the killing. But

1 nevertheless, he was arrested for selling drugs to an  
2 undercover officer the day after Moses Malone was killed,  
3 hasn't been charged for that.

4 Now, as I said, Mr. Caesar is a very important  
5 witness. Ms. Hoffman testified yesterday that the Moses  
6 Malone murder is the centerpiece of the government's case.  
7 That makes Mr. Caesar very important because Mr. Caesar's  
8 testimony that Mr. Johnson green-lighted that murder is the  
9 evidence, the only evidence, that connects Gerald Johnson to  
10 that murder.

11 Now, the question is, are all these guys lying?  
12 Well, we know that BGF is opportunistic, we know it's every  
13 man for himself. We know its members do whatever they can to  
14 advance their own interests and they do it by any means  
15 necessary.

16 We know they're liars. Gray lied to the  
17 prosecutors, saying he wasn't a BGF leader. In his original  
18 interview, Meadows said Lanvale and Johnson ordered Slay and  
19 Foo to kill Rochester and six months later he suddenly  
20 remembered that Johnson ordered it.

21 Troy Kellam said that after he killed Nealy he lied  
22 to stay out of prison. One month before the trial Mr. Davis  
23 told the prosecutors that Mustafa and Roscoe sent Gwaltney to  
24 rob him, and here he said it was Mustafa, Roscoe, and Gerald  
25 Johnson. Mr. Caesar sold drugs and kept the money and carried

1 a firearm while he was an informant without telling his  
2 handlers. Lamontae Smith lied about who shot him and about  
3 his own membership in BGF.

4 We also know their stories don't add up. There are  
5 different stories about the change from YGF to BGF. Remember  
6 who came to YGF and told them that they had to be -- had to  
7 join BGF? We heard Uncle Ray, we heard Sister Kim, we heard  
8 Will, we heard Mr. Gray. Mr. Gray talked about a YGF member  
9 who resisted joining BGF and was killed. How many YGF members  
10 moved to BGF? They were all over the place on that, somebody  
11 said only nine were taken.

12 Did YGF continue to exist? Mr. Rainey said it did,  
13 everybody else said it didn't. Mr. Kellam talked about the  
14 BGF -- I put quotes here, Facebook, he didn't call it  
15 Facebook, what he described was a membership roster that BGF,  
16 this criminal enterprise, keeps a book with all of its  
17 members' names and pictures in it. Did we see that book? How  
18 likely is it that a criminal organization does that?

19 Mr. Caesar was back and forth about Country's phone.  
20 Remember he said Country came in to borrow his phone because  
21 he didn't have one. Another time he said Country used his own  
22 phone. Mr. Caesar said that Gerald Johnson green-lighted the  
23 Malone murder, but remember the testimony, Mr. Malone was not  
24 a member of BGF, remember? Mr. Malone was a member of the  
25 Bloods and the testimony was that a green light was required

1 to kill another BGF member. It's not required to kill  
2 somebody who's outside of BGF.

3 Their stories lack detail. Mr. Johnson said -- I'm  
4 sorry, Mr. Gray said that Johnson was in charge of the BGF  
5 drug shops. What drug shops? Where were they? What drugs?  
6 Who else was involved? How did that -- being in charge  
7 manifest itself? Mr. Davis said Johnson was basically kind of  
8 running it. Again, where's the detail? He said BGF members  
9 told him not to sell in the building, but it was his  
10 understanding that this came from Mr. Johnson. So Mr. Johnson  
11 never told him not to sell in that building. Mr. Gwaltney  
12 said that Johnson gave him drugs probably two or three times  
13 in 2012. When? Kellam said that all his information about  
14 Mr. Johnson and BGF came from David Hunter. He said he only  
15 met Mr. Johnson once.

16 Let's talk about what's missing. Remember  
17 Mr. Caesar testified that he was an informant for years,  
18 including while he was in BGF. Remember he worked for Uncle  
19 Perry, who was a higher up in BGF. And while he was working  
20 for Uncle Perry, his car was bugged, his phone was tapped, and  
21 he made recordings of his interactions with Uncle Perry. He  
22 saw Mr. Johnson every day he said. Where's -- did he tape any  
23 conversations with Mr. Johnson? He said that Tech told him  
24 that when Tech went into the house, Geezy green-lighted the  
25 murder. Is there a conversation that he recorded with Tech

1 about that? What about Rainey? Rainey was an undercover  
2 agent. Again, no evidence.

3 Now, Kellam, here's an interesting one. Kellam says  
4 that he heard David Hunter call Mr. Johnson from the jail and  
5 ask him to get somebody else to take the charge for the Mills  
6 murder. Now, we heard a lot of jail calls here because every  
7 single jail call is recorded. And we know that the government  
8 can find pertinent jail calls. They found a lot of them in  
9 this case. Where's the jail call of David Hunter asking  
10 Gerald Johnson to get somebody else to take the charge?

11 Now, you heard a lot of talk about what Mr. Martinez  
12 called a vast conspiracy. Does this mean the police are  
13 lying, the prosecutors are lying, that people are deliberately  
14 trying to frame Gerald Johnson? No, it doesn't. But BGF  
15 members they're cunning, they're opportunistic, they're  
16 desperate, they're facing a lot of time in jail. They know,  
17 they're experienced, they know that when you cooperate, the  
18 more evidence you have, the better your deal. It doesn't help  
19 you much if you cooperate and say that guy you already  
20 convicted is a member of BGF or that guy you've already got a  
21 lot of evidence on is a member of BGF. They want fresh blood,  
22 and who better than Gerald Johnson. He's a presence in the  
23 neighborhood, everybody knows him, he's a big guy.

24 This is a page from Ms. Hoffman's closing argument.  
25 It's a picture of the photo array that Moses Malone completed

1 after he was shot. And he wrote on here, he identified Gerald  
2 Johnson and he said, "He got ranked, so I'm guessing he sent  
3 them at me." So what he said was, Gerald Johnson's a big deal  
4 in BGF, so he probably sent Norman Handy to rob me and shoot  
5 me. Well, what do we know about that? We know it's not true,  
6 remember? Because Mr. Caesar testified that the reason Handy  
7 robbed Malone was because he owed Tech money. Gerald Johnson  
8 had nothing to do with it. So we know that when Mr. Malone  
9 told this to the police he was wrong.

10 But nevertheless, if you're a police officer and you  
11 get this, what do you do with that? You say, well, I better  
12 look into this Geezy guy. So you bring in the BGF guys who  
13 are cooperating and say, tell me about BGF, and they tell you  
14 about BGF. Who else was in it, who else was in it, what about  
15 Geezy? And suddenly the BGF people are talking about Geezy.

16 We also know that BGF is a conspiracy, and it's a  
17 conspiracy that operates in the jail. So if I'm a BGF guy and  
18 I'm cooperating and I come in and they ask me about Geezy and  
19 I say, yeah, Geezy's a member too, and that gets their  
20 interest, I realize I've got something here. I go back to  
21 jail and I talk to my friends and I say Geezy.

22 Now, I want to talk about the murders. Mr. Johnson  
23 is alleged to have been connected to three murders in this  
24 case: The Gregory Rochester murder, Henry Mills murder, and  
25 the Moses Malone murder. He's not alleged to have

1 participated in -- these people were all shot. He's not  
2 alleged to have participated in the shootings, he's alleged to  
3 have authorized the Rochester and Malone murders. And he's  
4 alleged to have directed money to Mills's killer and then to  
5 have reenacted the killing.

6 Let's look at each of those. I talked about the  
7 Gregory Rochester murder, what Mr. Meadows said. Remember in  
8 June '07, he said Lanvale and Barclay told Foo and Slay to do  
9 it. When the government said, is there anything else you can  
10 tell us? He didn't tell them anything about Gerald Johnson.  
11 He didn't think, well, anything else might include the person  
12 who I know ordered the murder. But suddenly six months later  
13 he remembered that and he told them that.

14 Let's look at one other thing. Remember the  
15 testimony that there were two meetings about the Gregory  
16 Rochester murder; right? Mr. Meadows said that the first plan  
17 was to kill him outdoors. But then he said they had another  
18 meeting. Well, he said it was more like a bunch of individual  
19 meetings, but he said there was another meeting and they  
20 decided, we need to keep Geezy out of this, so we're going to  
21 do it differently. So how do we keep Geezy out of this? We  
22 kill him in Geezy's house while Geezy's there. Does that make  
23 sense? In our stash house that we know we're not going to be  
24 able to use after we kill him, does that make any sense?

25 Now, the government talked about Mr. Johnson's

1 spaghetti sauce comment and that -- you know, you can look at  
2 that one way, if you didn't hear it made, and think that's  
3 kind of cold. But you saw Ms. Woodley testify about the shock  
4 Gerald was in after that, somebody had been killed in his  
5 house, a friend of his.

6 Henry Mills, who is also called Nique, we saw the  
7 video of someone running up and shooting him. And then we saw  
8 the video of the BGF meeting in the park. Remember that  
9 video? I won't show it to you, but you saw it. What it  
10 consisted of was a bunch of guys hanging out under a tree in a  
11 public park while people came up on bikes and walked back and  
12 forth and moseyed around. This is hours after Mr. Mills was  
13 killed. The testimony was that the police were still on  
14 scene. Does this deadly, cunning, criminal organization  
15 decide, time to have our meeting, let's have it out in the  
16 park, let's pay off the killer and let's reenact it too? Does  
17 that make any sense?

18 And look at that video again. The government says  
19 that someone -- that Mr. Johnson directed somebody to Hunter  
20 saying give him the money, and then someone handed something  
21 to Mr. Hunter. What did he hand to Mr. Hunter? We don't  
22 know, we couldn't see it. Was it money? Was it cigarettes?  
23 Is Mr. Johnson actually reenacting the murder while the police  
24 are still on the scene?

25 Now let's talk about Moses Malone. Again, the

1 government says this is the center of their case. And if this  
2 is the center of the case, what does that say about the rest  
3 of the case? The evidence against Mr. Johnson with respect to  
4 this murder, and this is Counts 3 and 4, because if he's not  
5 involved in this murder, he's not guilty of Counts 3 and 4.  
6 What's the evidence here? The evidence is that Mr. Caesar  
7 said that he and Tech got the search warrant and walked to  
8 Geezy's house, that Tech went inside while Mr. Caesar remained  
9 outside, and Tech came outside and said Geezy green-lighted  
10 the murder.

11 Now, first of all, Mr. Caesar said you didn't need a  
12 green light to kill somebody who was in BGF. Malone wasn't in  
13 BGF. Second, I talked already about Mr. Caesar acting as an  
14 informant and taping conversations, none of those were here.  
15 Third, we saw Mr. Malone's photo array when he said he  
16 thought -- he guessed Gerald was involved in this. Again,  
17 that was proven wrong. And now, Mr. Caesar got on the stand  
18 and said, Gerald Johnson green-lighted this and I know  
19 because, one, Tech told me, and two, I heard Mr. Johnson in  
20 the little store tell Oct, who was Mr. Malone's girlfriend,  
21 that if she didn't help them find Malone, she was going to get  
22 killed.

23 Now, where was Tech, where was Oct? The government  
24 brought in a lot of people to testify in this case. Now, if  
25 you have somebody who says, well, I wasn't there when it

1 happened, I wasn't in the house when Geezy green-lighted the  
2 murder, but Tech told me, wouldn't it make more sense to bring  
3 in Tech, who was actually there, who can tell us exactly what  
4 was said and tell us exactly what happened? Where was Tech,  
5 where was Oct?

6 Mr. Caesar's testimony, I think there was some  
7 suggestion that Detective Taylor corroborated Mr. Caesar's  
8 testimony, but in fact she did the opposite. She said that  
9 when Caesar called her, he said Geezy and them are going to  
10 get Malone now, they're going to shoot him. The night of the  
11 shooting she said he called her on the cell phone and said  
12 Geezy and them are going to get Malone. What did Caesar say?  
13 Caesar said, I did not see Gerald Johnson that night, he was  
14 not there.

15 So the question on the racketeering counts, Counts  
16 1, 3, and 4 -- well, there's, two questions really, one, is  
17 there a reasonable degree as to whether Gerald Johnson was a  
18 member of the BGF Greenmount Regime? The other question of  
19 course is, did what the government says happened happen, did  
20 he in fact green light the Malone murder?

21 We went through all the evidence. No evidence that  
22 Mr. Johnson took an oath, that he performed a mission. All  
23 the signs that are missing, the tattoos, the bandanas, the  
24 George Jackson on the front of his shirt, his contacts, his  
25 text messages, the evidence that wasn't here, and the BGF

1       witnesses. That's what it is. Now, you have to take all that  
2       evidence and decide, ladies and gentlemen, beyond a reasonable  
3       doubt was Mr. Johnson in fact a member of the BGF Greenmount  
4       Regime? And I would submit respectfully that the evidence  
5       does not support that.

6 Let me turn finally to the drug conspiracy, Count 2.  
7 Count 2 is a -- the crime alleged in Count 2 is a conspiracy  
8 to possess or distribute drugs. And there is evidence in this  
9 case, as I told you in the opening, and Mr. Johnson told you,  
10 that Mr. Johnson sold drugs. The question is, did he conspire  
11 with somebody, did he enter into an unlawful agreement  
12 knowingly and willfully? And if he did, with whom, who did he  
13 conspire with? I already talked about BGF and all the  
14 evidence that he was not a member of BGF. Who did he conspire  
15 with?

16 Mr. Stokes testified that he got drugs from Gerald  
17 Johnson. If you believe Mr. Stokes, maybe he conspired with  
18 Mr. Stokes. But then -- and there was also evidence,  
19 Mr. Johnson testified himself that he acted as kind of a  
20 broker, that when someone would text him and say, hey, I want  
21 Percocets or whatever, he would put them in touch with  
22 somebody who was selling. Maybe he conspired with those  
23 people, but ask yourselves is there evidence that those  
24 transactions every happened?

25 And also, you're going to be asked in your

1 deliberations to determine that if there was a drug  
2 conspiracy, how much was involved? You need to figure out the  
3 weight that was involved. So when you go back there and think  
4 about was there a conspiracy, you need to ask yourselves, what  
5 was the evidence about how much of these drugs was involved in  
6 this case? There was evidence about BGF and all the drugs it  
7 sold. But if the conspiracy is not BGF, the question of how  
8 much drugs there was is critical.

9 So ladies and gentlemen, as I told you, this case is  
10 really about one simple question and the question is, who's  
11 Gerald Johnson? Is he a low-level neighborhood drug dealer,  
12 flamboyant personality, but neighborhood drug dealer, or is he  
13 a criminal overlord? He testified, he told you about how he  
14 lives his life, about how he tries to get by. He admitted his  
15 drug record. In fact, his record, his criminal record is all  
16 drug possession, drug dealing charges, except for the assault  
17 charge. Other than that, there's no shootings, no killings.

18 All we can ask at this point is that you go back and  
19 deliberate. You've listened very carefully to the evidence,  
20 that's been obvious. Now what we ask is that you go back and  
21 deliberate very carefully, with an open mind, that you talk  
22 about the evidence, that you think very carefully about what  
23 the evidence showed, that you think about what evidence  
24 applies to what person and what act. And I think if you do  
25 that, you'll deliver a verdict of not guilty. Thank you very

1 much.

2 THE COURT: Thank you, Mr. Enzinna. Ladies and  
3 gentlemen, we'll take a very short recess, about five minutes.  
4 During this recess do not discuss the case with anyone. Do  
5 not discuss it among yourselves. Do not allow yourselves to  
6 be exposed to any news articles or reports that touch upon the  
7 case or the issues it presents. Avoid all contact with any of  
8 the participants in the trial. Do not make any independent  
9 investigation of the law or the facts in the case. Do not  
10 look up anything on the internet. Do not consult an  
11 encyclopedia or dictionary. Please take the jury out.

12 (Jury left the courtroom.)

13 THE COURT: Five minutes.

14 (A recess was taken.)

15 THE COURT: Mr. Bussard, are we ready for the jury?

16 MR. BUSSARD: Yes, Your Honor.

17 MR. ENZINNA: Your Honor, may I be excused to go to  
18 Judge Blake's courtroom?

19 THE COURT: Yes, you may. And let's see,  
20 Mr. O'Toole will be here.

21 MR. O'TOOLE: Yes, sir.

22 THE COURT: And then at some point Mr. O'Toole is  
23 going to depart, when is that?

24 MR. O'TOOLE: I'm not sure, that's up in the air  
25 about that case. That may have be resolved, I'm just not

1 sure.

2 THE COURT: Oh, okay. So not today. You'll be here  
3 with us all day today.

4 MR. O'TOOLE: I'll be here all day.

5 THE COURT: Okay. Mr. Enzinna, you are excused.

6 MR. ENZINNA: Thank you.

7 THE COURT: And Mr. Bussard, you are ready.

8 Let's bring the jury in.

9 Mr. O'Toole, I will tell the jury that Mr. Enzinna  
10 has been excused, unless you want me to just not mention it.

11 MR. O'TOOLE: No, I think it's fine, Your Honor.  
12 Thank you.

13 (Jury entered the courtroom.)

14 THE COURT: Be seated, please. Ladies and  
15 gentlemen, we're ready to resume. You'll notice that  
16 Mr. Enzinna has been excused for a few minutes to attend to  
17 another matter in another courtroom. Of course Mr. O'Toole  
18 remains here on behalf of Mr. Johnson.

19 Mr. Bussard, do you wish to deliver a closing  
20 argument?

21 MR. BUSSARD: Yes, Your Honor.

22 THE COURT: Then you may proceed.

23 MR. BUSSARD: Thank you.

24 Good morning, ladies and gentlemen.

25 JURORS: Good morning.

MR. BUSSARD: It's been a long nine weeks. We've had a couple holidays in there, couple snowstorms in there. And for the most part your role has been passive, you just sit there and listen. And you don't have a whole lot of control over what happens. That's all about to change. And instead of all of this being the focus of this trial, you're going to be the focus of this trial. But for the next about an hour, if you can grant me that courtesy, because I'm speaking on behalf of Mr. Jones.

You all are part of a tradition extends back 600, 700 years starting over in Europe. And the circuit judges used to travel around the countryside, and they then gathered the important citizens, the most respected citizens in the community together to serve as jurors and they would hear the important cases of the day. For Mr. Jones, this is the most important case of the day.

Who is Kenneth Jones? Well, he's 30 years old, grew up in the Greenmount area. He lived in a family that had some tough finances, as you heard. His biological father was not in the home. He was raised by his mother and stepfather. And his stepfather was a work-a-day chef. And unfortunately, while he was the role model or the male in that house, he died prematurely of a heart attack. Mr. Jones left school soon after that. He in fact got a job and on the day he was arrested for this case, actually the one in the state, he had

1       been working that day before he was arrested and he told you  
2       that on the stand.

3                   What's the Greenmount area like? Well, the  
4       Greenmount area is a neighborhood in Baltimore City, and  
5       you've seen the maps and I'm not going to bore you with all  
6       those maps. The Greenmount area consists of people, not  
7       geography. And the people are people like these three young  
8       men over here and a lot more, as you've heard. And they all  
9       grew up together, they played in the playgrounds when they  
10      were real young, their mothers probably strolled them down the  
11      street. They went to school together. They became friends.

12                  And I want you to think a little bit about your  
13      friends from early childhood, everybody didn't remain perfect,  
14      but you still stayed friends with them if you see them. If  
15      you see them around now they may not have become, you know,  
16      doctors or accountants, they may have been a little bit less  
17      successful in life. But nonetheless, they were your friends.  
18      And you have friends today and you call those people your  
19      friends.

20                  Well, when we talk about Kenneth Jones and Joseph  
21      Bonds and Gerald Johnson and Marquise McCants, Wes Brown, I  
22      can go on and on with the names, these are people that grew up  
23      together, and they're friends. Does that make them part of a  
24      conspiracy? No. And I apologize in advance for repeating  
25      some of what Mr. Enzinna had said earlier. They talked a lot.

1 You heard there was a lot of rumors in the neighborhood, you  
2 heard there was a lot of things going on in the neighborhood.  
3 But does that make you BGF? These were friends, these were  
4 childhood friends that grew up together.

5 In the beginning I asked you to keep in mind two  
6 concepts. One was to keep an open mind. We're not done yet,  
7 so I'm asking you to keep that open mind until you hear all  
8 sides of this -- this story, this vast conspiracy that the  
9 government is talking about. Second, and I'm really going to  
10 ask you to follow this, is follow the evidence in this case.  
11 There's a couple ways of looking at it. You can decide that  
12 you've either found these young men guilty or you've found  
13 them not guilty. But that's the result.

14 What we're asking you to do is look at the evidence.  
15 That's what Mr. Enzinna did when he went through for the last  
16 hour talking about the evidence in this case. And that's what  
17 I'm going to do too. And that's what the government is asking  
18 you to do. And that's not an easy job. If you just want to  
19 get it over with, you can think about the result and the  
20 result -- just take a vote and call it a day. But that's not  
21 what the instructions that Judge Bredar's going to give you  
22 say, and that's not what deliberations are all about.  
23 Deliberations are going to start around lunchtime today and  
24 that's when your hard work begins. Take your time and make a  
25 deliberate, that's why they call it deliberations, a

1 deliberate decision.

2 There's a few instructions that Judge Bredar is  
3 going to be giving you later on. And I always start with this  
4 one because it is the foundation of our justice system, and it  
5 says -- this is the words that Judge Bredar is going to read  
6 to you in a little while, the presumption of innocence. And  
7 it really is a guideline about how you're supposed to look at  
8 this case. It gives you all the information you need to deal  
9 with the rest of this case and this huge amount of evidence  
10 that we have.

11 And there's one line in about the third, fourth  
12 paragraph down that says the presumption of innocence alone is  
13 sufficient to acquit a defendant. Presumption of innocence  
14 remains with the defendant until and unless you are convinced  
15 by the government's evidence that the government has proven  
16 the defendant's guilt beyond a reasonable doubt.

17 It's your job to take the government's evidence and  
18 challenge it. You look at it, you mull it around for a while.  
19 Does it live up to the way Ms. Hoffman yesterday explained it  
20 to you? And then you're going to be drawing conclusions from  
21 that. I ask you to base your decision on the evidence, not on  
22 argument, not on speculation, and not on emotion.

23 A major portion of this trial has been -- dealt with  
24 videos, tattoos, cell phones, Facebook, jail calls, and a lot  
25 of talk by others about people. Would you like to be judged

1 by how other people talk about you when you're not there to  
2 contradict it? The history of this case started actually in  
3 2005, 12 years ago. Some of you are too young, but if you can  
4 remember 12 years ago, Facebook was kind of an after thought,  
5 people didn't even know what it was all about. Instagram  
6 hadn't even really taken effect yet, it wasn't popular. And  
7 cell phones were something that you maybe were able to call  
8 your mother or call your husband or call your wife and talk to  
9 them a few minutes. Obviously they've become a lot more in  
10 the last 12 years.

11 There's no videos of Kenneth Jones, you haven't seen  
12 one video in this courtroom of Kenneth Jones. You haven't  
13 seen Kenneth Jones having a Facebook account. You haven't  
14 seen Kenneth Jones having an Instagram account. You've seen  
15 Kenneth Jones's picture, but they're always in somebody else's  
16 Facebook account. And you've heard testimony about how people  
17 just post things, and think about -- some of you may be on  
18 Facebook and Instagram. Pictures kind of pop up there and you  
19 go, my goodness, I got tagged in that and that must have been  
20 five years ago, and you're sitting there with a group of  
21 friends and you're going, it's nice to see them on there and  
22 it brings back all these memories.

23 What the government's done with these Facebook  
24 accounts is saying, because they're in these pictures and  
25 they're on the Facebook account of maybe Mr. Johnson or Wesley

1 Brown or as we're going to hear, Ronnie Hall and these other  
2 people, your picture would show up on that, all the sudden you  
3 might be a member of a conspiracy. That doesn't make you a  
4 member of a conspiracy. And I'm going to close my remarks in  
5 a little while with some guidelines for you to keep in mind.

6 The tragedy in this case is that Moses Malone, Henry  
7 Mills, Thabiti Wheeler, Trevon White, Ben Miller, and Gregory  
8 Rochester and others met a tragic end. In the case of Moses  
9 Malone, I talked to you briefly in the opening and I'm going  
10 to tell you again, his death may have been preventable. There  
11 was a series of unfortunate acts by law enforcement, by law  
12 enforcement's agent on the scene, Harry Caesar, by missed  
13 calls, by miscommunication with the witness protection, and  
14 all of that combined along with somebody who had a gun, Moses  
15 Malone died.

16 Don't be fooled by the gallantry with which Harry  
17 Caesar has been put up on a pedestal. Mr. Enzinna talked  
18 about that a little bit earlier. He did call Detective  
19 Taylor, he did try to warn her that Moses Malone was back in  
20 the neighborhood. When he couldn't reach her, what did he do?  
21 He didn't call 911. He could have called 911 and said look,  
22 I'm a government informant, can you help me out real quick,  
23 can you find her and all that, she must have her phone turned  
24 off. But no, he didn't do that. He just kept calling and she  
25 was missing her calls and what have you.

1 Harry Caesar is a thug. The visual of what I had  
2 listening to Harry Caesar is somebody -- and I hate to be --  
3 I'm not trying to be humorous, but somebody with alligator  
4 arms that couldn't quite reach that warrant that was sitting  
5 there on the table when they came back from the police  
6 station. Tech grabbed it, Harry Caesar was there, and you saw  
7 Harry Caesar was a pretty dominant personality. But he didn't  
8 want do all that because he would have blown his cover. He  
9 could have grabbed that warrant, he could have chewed it up,  
10 could have done whatever as soon as he saw it. But he didn't  
11 do that. Tech runs out of the house. He could have done any  
12 number of things, but he didn't do it. And unfortunately a  
13 tragedy occurred. Did Harry Caesar cause that? No, he didn't  
14 cause that. But he was on the scene and it may have been  
15 preventable.

16 Kenneth Jones was not even mentioned during the two  
17 weeks or more of the Moses Malone event. He's not charged  
18 with murder in this case, although you may think so based on  
19 the government's presentation. As you've heard, this is about  
20 something different, it's about racketeering. Defendants  
21 aren't claiming that the young men that I mentioned earlier  
22 were not murdered. But were they murdered as part of a  
23 racketeering conspiracy? When David Hunter and Wesley Brown  
24 and Ben Miller and Shawn Gregg, known as Hood, kills people,  
25 is that part of BGF or is it the old fashioned state charge of

1       murder? You've heard that Kenneth Jones allegedly was a  
2       member of BGF because he had some tattoos. Not one person  
3       walked into this courtroom and said that Kenneth Jones took an  
4       oath, in prison or elsewhere. I apologize.

5               As you're going to hear from the instructions read  
6       by Judge Bredar in a little while, Mr. Jones is only charged  
7       in Counts 1 and 2. Count 1 is the racketeering conspiracy.  
8       Count 2 is the drug conspiracy. He's not charged with any of  
9       the murder counts. He's not charged with any of the gun  
10      counts. Every word that Judge Bredar reads is going to have  
11      special meaning to you and you have to follow his  
12      instructions. And I ask you to do that.

13               The government showed you a slide similar to this  
14      yesterday, and Mr. Enzinna showed you one similar to this  
15      morning. It's Count 1, the racketeering conspiracy. And the  
16      defendants have to conspire to violate the Racketeering  
17      Influence and Corrupt Organizations Act. First, there has to  
18      be an agreement between two or more people to participate in  
19      an enterprise that would affect interstate commerce through a  
20      pattern of racketeering activity. Second, that the defendant  
21      knowingly and willfully became a member of that agreement.  
22      And third, that the defendant or another member of the  
23      conspiracy agreed to commit two racketeering acts. All that  
24      will be explained to you by Judge Bredar in a little while.

25               What does that mean in practical terms? Well,

1 generally speaking there was a gang, it was called YGF and  
2 you've heard ad nauseam about the YGF group in Greenmount,  
3 bunch of childhood friends with no -- they got together, there  
4 was no meetings, no rules, no -- no nothing, they just got  
5 together. At some point, the government spent about two weeks  
6 in the beginning of this case talking about the gang called  
7 BGF. And then they talked about membership in BGF, and they  
8 talked about the transition.

9 Michael Gray, Brian Rainey, Troy Kellam, and Michael  
10 Gwaltney testified that there was a group, beginning of 2005,  
11 12, 13 years ago, and continuing to 2017, that was in the  
12 Greenmount area and they were called YGF. And at some point  
13 around mid 2007, there was this transition. Michael Gray was  
14 the acknowledged leader of this group. He would tell you that  
15 he was the leader of this group. Michael Gray also admitted  
16 that he had a lot of power. He wanted power. He thrived on  
17 power and control. He ordered numerous murders. Mr. Enzinna  
18 told you about that.

19 He also got money. He set up these regimes,  
20 according to him, all through the city, and who did they  
21 benefit? Well, they benefited Michael Gray. Michael Gray was  
22 given money by all these people. Allegedly there was  
23 something called dues, and they would pay these dues and the  
24 dues were all trickled down. Well, if you trickle down to the  
25 last person, the leader, who's getting that money? Well,

1 Michael Gray is. He said people gave him drugs because he was  
2 the leader, they gave him all this stuff. So Michael Gray  
3 naturally says, I created the organization, I set this thing  
4 up, it's working rather well.

5 The government also told you that Kenneth Jones was  
6 a member of the BGF Avenue Regime. You will recall, and I saw  
7 all of you taking notes, listening to the testimony. You also  
8 notice that I did not cross-examine any of those four  
9 witnesses. And the reason is, they didn't mention Kenneth  
10 Jones. None of those four, in any respect, mentioned Kenneth  
11 Jones. They didn't talk about him doing anything in prison  
12 and all those guys talked about their prison activities.  
13 Kenneth Jones has been in prison, you know that. They didn't  
14 talk about anybody giving him the oath. They didn't talk  
15 about him being at meetings.

16 Those four individuals who were brought in here to  
17 tell you how structured BGF was, and they gave you all the  
18 terms, did not link Kenneth Jones to BGF. I don't care how  
19 many charts you make up, how many faces you put on these  
20 charts, just because your face is on an exhibit, a chart  
21 doesn't make you a member of BGF.

22 Christopher Meadows, we'll talk about him a lot,  
23 talked about Mr. Jones being at the transition that happened  
24 around mid or early 2007. The four individuals that I have on  
25 the screen in front of you couldn't testify about Kenneth

1 Jones because they didn't know Kenneth Jones. You saw them  
2 sitting up here, looking down the rows. They were looking to  
3 see if they knew anybody, and they didn't know Mr. Jones. The  
4 government asks you to find that the Greenmount Regime of BGF  
5 is a racketeering enterprise. But the criminal conduct  
6 conducted by the members, and you've heard a lot about  
7 criminal conduct in this case, were all part of a pattern of  
8 racketeering activity. And they produced charts to show you  
9 that because their picture's on that chart they must be a  
10 member of the Greenmount Avenue Regime of BGF.

11 Judge Bredar's instructions are going to control how  
12 you handle all that evidence. I will tell you, and the  
13 testimony is uncontradicted in this case, that except for a  
14 few days in 2007, Mr. Jones was in prison. If the transition,  
15 the meeting that Christopher Meadows was so confident about,  
16 and some of those other people talked about, occurred, Kenneth  
17 Jones wasn't there. And that's why these four individuals  
18 didn't mention him. But that didn't stop Christopher Meadows  
19 from saying that Kenneth Jones was there. He didn't think  
20 hard enough to realize that Kenneth Jones was in jail for all  
21 of 2007 except for a very few days.

22 Count 2 is a conspiracy to distribute and possess  
23 with intent to distribute controlled substances. And the  
24 requirements generally are two or more people entered into an  
25 unlawful agreement to distribute and possess with the intent

1 to distribute controlled substances. Second, that the  
2 defendant knowingly and willfully became a member of that  
3 conspiracy. Now, you'll recall, and Judge Bredar's  
4 instructions are going to control how you look at this  
5 evidence, but I ask you to think about it.

6 Aside from Christopher Meadows, who else has even  
7 mentioned Kenneth Jones as being around Jones -- drugs? There  
8 are no traffic stops, there are no sales to undercover  
9 officers. There were no search warrants executed at any of  
10 Mr. Jones's houses where drugs were found. And Mr. Jones  
11 never admitted or was asked during his testimony about whether  
12 he used drugs. It simply is not reasonably foreseeable to  
13 Mr. Jones that he was part of a controlled substance  
14 conspiracy. He didn't have drugs in his prison cell, he  
15 didn't have drugs in his pocket when he had the gun in his  
16 pants, he didn't have drugs when he was arrested.

17 We're going to talk about the government witnesses a  
18 little bit. But the government's invested about four years,  
19 maybe even longer, in this prosecution. And they presented a  
20 lot of witnesses, criminals. The nicer term is cooperating  
21 witnesses, but make no mistake, they were all criminals. And  
22 they're all criminals looking for a benefit, and those  
23 benefits can be any number of things. The obvious one is they  
24 hope for a lesser sentence after pleading guilty, some of them  
25 do. No doubt about that.

Judge Bredar's going to instruct you down the road, probably this afternoon, that you have to evaluate people who enter into plea agreements and agree to cooperate and testify. You have to use a little bit different standard in evaluating their testimony as opposed to ordinary witnesses. Some of these individuals were never charged with any criminal conduct.

Michael Gray, make no mistake, was never charged with the 40 murders that he talked about. Joe Davis was never charged with the shooting of his -- or the robberies that he committed. Troy Kellam admitted killing his best friend, as Mr. Enzinna told you this morning. Michael Gwaltney committed numerous acts of violence and he wasn't charged with all of those. Make no mistake, when sentencing comes for some of these individuals, the government is going to recommend a lower sentence.

There's some individuals who never had a plea agreement. The government's going to make a deal about that, that why would they come in here? They came in here out of the goodness of their hearts and as upstanding citizens of the Greenmount community. And Lamontae Smith is one of those in particular. He didn't have a plea agreement. He admitted to actively participating in the murder of Ben Miller. He didn't pull the trigger, but he was there. He knew that Shawn Gregg, Hood, was going to kill Ben Miller and he went along kind of

1 as a distraction to Miller to lure him into a place where Hood  
2 could do it. So he didn't kill anybody, but he may as well  
3 have.

4 Christopher Meadows robbed numerous people in Dutch  
5 Village and then he said he came back into the neighborhood,  
6 different neighborhoods, and was robbing different people. He  
7 was never charged with those robberies. Joseph Davis, I don't  
8 believe was charged with shooting Mr. Johnson.

9 They also committed crimes without fear of criminal  
10 prosecution. The big example is Harry Caesar. Harry Caesar  
11 admitted to selling drugs as an informant. He was out there  
12 selling on the corner as part of his informant duties and he  
13 was allowed to keep the profits of all that. Now, you may  
14 recall that Mr. Caesar stumbled a little bit when asked about  
15 his finances because apparently he was -- he was keeping some  
16 of those profits. When he was asked about how he made bail,  
17 he said, well, I had some money stashed away. Now, person  
18 with a felony record doesn't make \$51,000 a year, which is the  
19 financial consideration that he was getting for that, and  
20 allowed to keep the profits from his drug business.

21 Why is the government so sure about this case?  
22 They're so earnest when they get on the witness stand, all the  
23 law enforcement. It's because of what I told you in the  
24 beginning, the government doesn't make mistakes. They get a  
25 theory, they insert some facts, and they run with it. Well,

1 I'm going to give you a few other ways of looking at it.

2 Mr. Jones is not charged with murder, as I've already said.

3 I'm going to show you how some of the facts in this  
4 case are seriously flawed. Your recollection is going to  
5 govern all this. There's almost no eyewitnesses to almost any  
6 of these events, there's only word on the street. And as you  
7 heard from the one conversation, I think between Mr. McCants  
8 and Mr. Burris, Mr. Burris, who we never heard in this trial,  
9 Mr. Burris said there's so many -- so many stories going  
10 around I don't know what to believe anymore. That's the way  
11 the Greenmount area was. There was rumors and that was part  
12 of the one-upmanship, was how many more murders -- or rumors  
13 could you spread and how could you deflect attention away from  
14 yourself onto other people.

15 Now, you just heard government witnesses without  
16 defense cross-examination, that may sound like a very good  
17 story. The government attempted to bolster their story by  
18 saying BGF's in prison, BGF's all over the city, BGF is  
19 pervasive in the Greenmount area, and BGF has created a  
20 neighborhood living in fear.

21 A video, I'm not going to show you the video, has  
22 Mr. Johnson in a green shirt hanging around in the park and it  
23 looks like a good time. And when it's focused in just on  
24 Mr. Johnson and allegedly Mr. Hunter, who received something  
25 from somebody else over there, it looks like just a few -- a

1 gathering of friends. When the camera pulls back though, and  
2 you were able to see the full video and I ask you to look at  
3 that full video back in -- when you start deliberating, you're  
4 going to see people walking by on phones, you're going to see  
5 people -- mothers pushing strollers, you're going to see  
6 children playing ball. You're going to see a young man on a  
7 scooter who wheels up, listens to these guys and goes, oh,  
8 fools, we don't need them, and he wheels away on this little  
9 two-wheel scooter. Is that a neighborhood that is in fear?  
10 Is that a neighborhood that looks like they're being  
11 threatened and intimidated? That video was put in to evoke a  
12 lot of strong emotions because it followed the Henry Mills  
13 horrible murder that was not committed by any of these three  
14 young men.

15 More about the witnesses. I had told you a little  
16 bit about what to look for in the witnesses. Well, think  
17 about the law enforcement witnesses. For instance, law  
18 enforcement witnesses get on the stand, they were well  
19 prepared, they would answer the questions directly from the  
20 government, and they would turn their head. It was very, very  
21 orchestrated, very rehearsed, and they would address their  
22 answers to you. The cooperating witnesses would make good eye  
23 contact with the prosecutors, they would answer the questions,  
24 they knew what the questions already were going to be, and  
25 they answered accordingly. They would say yes, ma'am; no,

1 ma'am; yes, sir; and no, sir.

2 And then the four of us would stand up and start  
3 asking questions and you start getting instead of yes, sir;  
4 no, sir, you start getting "nah," "yeah," and then you start  
5 getting hesitancy and pauses, then you start getting some  
6 surliness, and then you start getting the body language that  
7 becomes more defiant. And if you remember, from this witness  
8 stand, Lamontae Smith, who didn't want to be here in the first  
9 place but he was, started hiding his head. In the end of his  
10 testimony, his head was over against that monitor and he was  
11 trying to hold it up and he had his arm up there. He didn't  
12 want to answer any of our questions. And again, as I said,  
13 the most dramatic of all was Mr. Caesar. Mr. Caesar just had  
14 some questions about his finances that he didn't want to talk  
15 about.

16 Mr. Meadows testified and he's testified a lot of  
17 times and he answered all the questions put to him by the  
18 government. Mr. Meadows on cross got a little vague about  
19 when these meetings were happening, where these meetings were  
20 happening, and he wasn't really certain about some of his past  
21 testimony or when he became a member of BGF or where he became  
22 a member of BGF. And he just shrugged it off and he actually  
23 said a couple times "whatever" in response to counsel's  
24 questions. Well, "whatever" is not a fact. Again, you can't  
25 speculate.

The law enforcement people -- I just point out, was there a dress code involved? Because I think the four or five first witnesses from law enforcement all came in looking much better dressed than anybody in this courtroom. They had their bow ties on, they were trained to look at the jury. And all the sudden, when they started getting questioned, they go, "I don't recall." But they testified about things -- events that were happening 10 or 12 years ago like it happened yesterday. But all the sudden, when they're cross-examined, "I don't recall" or "I don't remember." Well, that's because they weren't asked that question in prep sessions. "I don't recall" and "I don't remember" doesn't fit with the facts of this case.

When the government said, is there some document that would refresh your memory, oh, yeah, it will. And they showed them the report, oh, yeah, I know. When we ask them, the defense would ask, is there a document that would refresh your memory? No. We can't ask anything else. If there's nothing that will refresh their memory, we can't go any further.

I'm going to talk a little bit more about the government's proof. These are witnesses who did not testify in this case. Joseph Bonds, we heard a lot about Joe, we heard a lot about Gotti, but he didn't testify. Wesley Jerel Brown, I call him Terp Brown because he was a running back at

1 the University of Maryland before he got into some trouble.

2 Government put in testimony through Detective Hayden  
3 that seems to indicate, and we'll talk about this in a little  
4 while, that he was trying to buy a weapon from Kenneth Jones.  
5 He surely was buying weapons from other people, you can read  
6 those text messages before. He was trying to sell drugs,  
7 probably at the University of Maryland. He was trying to buy  
8 guns. He had some ammunition, which is really clear from the  
9 text messages. And when the police come in, I'm going to talk  
10 about this in a few minutes, when the police come into his  
11 dorm room, he has a .22 in his dorm room. What would a  
12 college student need with a gun?

13 This is James Cornish, otherwise known as Nod. You  
14 heard that "nod" is a drug term, I think Mr. Meadows maybe  
15 admitted that, for somebody who takes a lot of drugs and  
16 sometimes nods, passes out. This is Lavon Cypress, this is  
17 Swan. Swan, you heard his voice on a phone call from Kenneth  
18 Jones, maybe a couple phone calls from jail. And they're  
19 talking about something the government says was a gun.  
20 Mr. Jones says it was a car. Nobody knows what it was. But  
21 we didn't hear from Mr. Swan -- Mr. Cypress, only Officer  
22 Badgujar talked about his conversations with this gentleman.  
23 But we didn't hear from Mr. Cypress to hear his side of the  
24 story. And while I'm at it, we didn't hear from his cousin  
25 where the gun was found, Courtney Carroll.

1                   This is Kenneth Faison, otherwise known as Roscoe.  
2 There was a lot of talk to other people about other people.  
3 He hasn't talked to Kenneth Jones. We have Ronnie Hall,  
4 Cakes. We have his Facebook, we have all kinds of text  
5 messages. We didn't hear from Mr. Hall. Mr. Handy, which  
6 I'll get to in a few moments, we didn't hear from Mr. Handy.  
7 Ms. Hitchens, we didn't hear from Ms. Hitchens in this case.  
8 David Hunter, we heard a lot about things that David Hunter  
9 was allegedly doing, but we didn't actually hear from David  
10 Hunter in this case.

11                  Heard about this individual, his name is Antonio  
12 Oliver, Bubba. Bubba's not a BGF member. He was part of a  
13 rival gang, he was probably part of Lanvale and Barclay, which  
14 Mr. Enzinna mentioned this morning. A rival gang, not  
15 anything from Greenmount. You heard about this individual,  
16 Tech. Tech's the guy who allegedly grabbed the warrant, ran  
17 to Mr. Johnson, and set in motion that horrible set of  
18 circumstances. We heard about Stymie. We saw pictures of him  
19 with the T-shirts and what have you.

20                  We heard about this individual, Paul Wilson, Twin.  
21 We also unfortunately didn't hear from these individuals. We  
22 didn't hear from Ben Miller. We didn't hear from Donatello  
23 Fenner. We didn't hear from Shawn Gregg, Hood. We didn't  
24 hear from Moses Malone, although we did hear a little bit of  
25 his discussions with law enforcement. We didn't hear about

1 Charles Pace, otherwise known as Foo. We didn't hear about  
2 Michael Robinson, otherwise known as Mike Mike.

3 Now, I'm going to try and go through a little bit  
4 of -- and these are taken out of the indictment. And I'm  
5 going to talk about the different allegations that pertain to  
6 Mr. Jones in this case, and I'll try to be as brief as  
7 possible, but they are important to Mr. Jones. Overt Act 17  
8 says beginning in approximately 2005 and continuing until  
9 early 2007, Johnson supplied distribution quantities of  
10 cocaine, cocaine base, heroin, and I'm not going to pronounce  
11 that, to other YGF members, including Faison, Bonds, Jones,  
12 Hunter, who in turn assisted Johnson in distributing drugs on  
13 the street.

14 The only testimony about these acts is Christopher  
15 Meadows. Now, there was no house raids, there was no sales to  
16 undercover officers, there were no traffic stops, and there's  
17 no telephone calls talking about quantities of drugs, types of  
18 drugs between Mr. Jones and anybody else during this time, or  
19 any time, as a matter of fact.

20 Overt Act 18 says that approximately 2005 to early  
21 2007 Johnson used a residence located at 221 East 25th Street  
22 as a stash house where other YGF members, including Faison,  
23 Bonds, Jones, would store and package their drugs. The sole  
24 testimony in this case, Christopher Meadows. No one else came  
25 in here and said that there was drugs at that location.

Overt Act 19 beginning in approximately 2005 and continuing until early 2007, Johnson and other members of YGF, including Faision, Bonds, Jones, and Hunter, held gang meetings there. Again, Christopher Meadows, not Michael Gray, not Brian Rainey, not Troy Kellam, not Michael Gwaltney, not Joseph Davis, none of them talked about that, only this gentleman right here, Christopher Meadows.

On January 9th, 2007, there was a horrible murder at 221 East 25th Street. This Overt Act 23 alleges and the government -- you've heard the assertions that Mr. Jones and others participated in the murder of Gregory Rochester. Detective Lloyd testified that he interviewed, he investigated the crime, he examined the crime scene, he reviewed CCTV and other surveillance cameras in the area. And he walked around the crime scene with his tech, recovered shell casings. And he concluded there were no suspects, there were no leads.

Detective Lloyd is very important for another reason, however, it's that on that crime scene, no drugs were found, there was no drug paraphernalia found on the drug scene at 221 East 25th Street. Nobody except this gentleman says that this happened, and we know it happened, but who was responsible for it?

Now, six months later, June of 2007, Meadows gets arrested for possession of a handgun and he starts talking. And as Mr. Enzinna already told you, he told one story, he

1 signs a plea agreement when he comes over to the feds and  
2 about six months later, again in January 2008, one year after  
3 the murder of Gregory Rochester, he starts changing his story  
4 a little bit and he adds other people.

5 Now, you have to think about that a little bit  
6 because, what's happened in that year? Well, we mentioned  
7 Charles Pace. Charles Pace was killed February 19th, 2007,  
8 four months before Meadows talks about that murder. Little  
9 bit later, Fenner, who he had thrown in the mix, gets stopped  
10 at a traffic stop by Detective Roepcke. And what does Fenner  
11 have in his car, after he runs away, kind of flees and alludes  
12 away from Officer Roepcke's orders to stay there? What does  
13 he find in the car, what does Officer Roepcke find? Two guns.

14 And those two guns that Fenner had go back to the  
15 shooting of a person named Bubba, which I showed you earlier,  
16 and this shooting. Mr. Fenner had that gun, but now he's  
17 dead, so we can't question Mr. Fenner about where those guns  
18 came from. And Foo's dead. So here we are, ten years, 12  
19 years later and the government points its legal finger at  
20 Kenneth Jones because Kenneth Jones is the one person still  
21 alive that Mr. Meadows mentioned, otherwise there's no reason  
22 to even be here.

23 Now, you have to think about this a little bit and  
24 I'm not trying to be funny. But the testimony -- and  
25 Mr. Enzinna touched on this briefly, there was a meeting,

1 actually two meetings, and Mr. Johnson and Mr. Jones and a  
2 couple other people all decided that Gregory Rochester had to  
3 go. So what do they plan to do? Well, since they package and  
4 store all their drugs at 221 East 25th Street, let's kill him  
5 there, that won't draw any attention to us. And since  
6 Mr. Johnson lives there, and you heard Mr. Johnson testify  
7 that it was his residence and the detectives also testified  
8 that they interviewed Mr. Johnson as being a resident. Let's  
9 kill him where Mr. Johnson lives, that won't draw any  
10 attention to us.

11 And 221 East 25th Street is a boarding house,  
12 there's other residents that live in there. Let's kill him  
13 right there, so there's witnesses around who we maybe don't  
14 have any control over those witnesses. The absurdity defies  
15 rational thought. What is supported by the facts is, Gregory  
16 Rochester was homeless, according to Mr. Meadows. Gregory  
17 Rochester would stay in the common area where he was found  
18 shot to death at 221 East 25th Street. And Gregory Rochester  
19 was killed by someone, probably a rival drug gang, who wanted  
20 it to look like these guys were involved. That might be Foo,  
21 that might be Donatello Fenner, that might be Bubba, who  
22 actually was taking action, and less than a month later he did  
23 kill Pace.

24 MR. MARTINEZ: Objection --

25 MR. BUSSARD: There was testimony from --

1 THE COURT: You may approach.

2 (Bench conference on the record.)

3 THE COURT: Mr. Martinez.

4 MR. MARTINEZ: Your Honor, this is the second or  
5 third time there's been evidence mentioned to the jury about  
6 Charles Pace. There are a couple instances where Mr. Bussard  
7 mentioned Charles Pace being murdered. I don't believe that  
8 came out and came into evidence during this trial, and I don't  
9 believe that there was evidence of the incident Mr. Bussard  
10 just mentioned. We let it go the first couple of times --

11 THE COURT: Mr. Bussard, what is the factual basis  
12 in the record of this case from which you can make that  
13 argument or from which you can extrapolate in order to justify  
14 this argument as a reasonable inference to be drawn from proof  
15 presented here?

16 MR. BUSSARD: Christopher Meadows testified as a  
17 government witness in this case. Christopher Meadows said  
18 that while he was in protective custody, I forgot if he was ad  
19 seg at the jail, he was housed with Antonio Oliver, known as  
20 Bubba. Bubba told him a few things, including the fact that  
21 he --

22 THE COURT: So Christopher Meadows said that Bubba  
23 told him --

24 MR. BUSSARD: That he was responsible for the -- for  
25 killing Charles Pace on February 19th, 2007.

1                   MR. MARTINEZ: That came out in the grand jury, but  
2 not in the -- before this trial.

3                   THE COURT: I don't have a clear enough recollection  
4 to specifically resolve the issue. Accordingly, I will advise  
5 the jury that it's their recollection that will control.

6 Mr. Martinez, you remain free to argue the evidence as you  
7 believe it was presented in your rebuttal. You may step back.

8                   (The following proceedings were had in open court.)

9                   THE COURT: Ladies and gentlemen, at a time like  
10 this where there's a dispute between the attorneys as to what  
11 or was not presented to you during the trial, what is in the  
12 evidence and what is not in the evidence, it's appropriate for  
13 me to remind you that ultimately after this lengthy trial, it  
14 is your recollection of the evidence that controls, not the  
15 attorney's recollections on either side, but your own  
16 recollection of what the testimony was and what the proof was.  
17 And I so instruct you.

18                   Mr. Bussard, you may continue.

19                   MR. BUSSARD: Thank you. About a year later,  
20 January 2008, Mr. Meadows decides to add Donatello Fenner to  
21 the mix. And he actually completes a photo array. And I'm  
22 not sure it's showing up as well as it should, and he picks  
23 out Mr. Fenner and adds that as well. There's the photo array  
24 and the bottom center picture is Mr. Meadows's identification  
25 of Mr. Fenner. Mr. Fenner had been stopped May -- March 3rd,

1 2007 by Detective Roepcke and he had a .38 caliber Taurus  
2 handgun and a Sig Sauer 9mm pistol. Ms. Bohlen came in and  
3 Ms. Bohlen said to a reasonable degree of ballistic certainty,  
4 based on her expertise, that those guns in the possession of  
5 Mr. Fenner, were -- who -- the weapons that had fired the  
6 casings that were found at the scene of the Antonio Oliver  
7 shooting on January 4th and the Gregory Rochester shooting on  
8 January 9th of 2007.

9 The government says that, how would Mr. Meadows know  
10 about that? Well, he didn't have to know about that except  
11 that he knew about Mr. Fenner. They were still all friends at  
12 that time. He knew Mr. Fenner had been arrested, the rumors  
13 in the neighborhood were -- were strong. And Mr. Fenner was  
14 arrested with two firearms, and Mr. Meadows probably had some  
15 pretty good knowledge about Mr. Fenner's involvement in all  
16 this, so he had no reason not to put Mr. Fenner into the mix.  
17 Again, ten years later the government points its finger at the  
18 only person still alive, and that's Kenneth Jones.

19 Ms. Hoffman did not talk about that, but I want to  
20 talk about this for a moment. On April 11th, 2011, in the 900  
21 block of East North Avenue, Mr. Jones unlawfully possessed a  
22 Taurus .357 magnum firearm. Yes, he did. He -- I told you in  
23 the beginning, Mr. Jones admitted it, and he was convicted of  
24 that possession of a firearm. He was not a felon, not charged  
25 as a felon in possession. He was charged with possession. He

1 served his time, he didn't resist. Detective Sailor, he  
2 obeyed all the commands. And if you remember, they had to cut  
3 the gun out of his lower pants, down around his calf.

4 Mr. Jones pled guilty to that, served time to  
5 possession of a firearm. Six or seven years -- oh, and  
6 Detective Sailor, after he had arrested Mr. Jones, writes a  
7 report, an official report. And in that report he talks about  
8 yelling to Mr. Jones to stop. And he stopped. And he found  
9 the gun. He doesn't mention in that report, and I asked  
10 Mr. -- Detective Sailor, you can recall what Detective  
11 Sailor's comments were, there was no mention of any statements  
12 that were made after Mr. Jones was arrested. Detective Sailor  
13 couldn't leave that alone, so six or seven years later he  
14 decides to add a little bit to it, "because they shot at me  
15 first." He says Mr. Jones just blurted it out and he didn't  
16 put that in the report because he didn't think it was  
17 necessary or important at the time.

18 Well, there's no link, first of all, to BGF about  
19 anything in that incident. Detective Sailor's recent comments  
20 that are not in his report six or seven years ago were meant  
21 to be inflammatory, and I ask the Court -- or the members of  
22 the jury to take it for whatever value you think is necessary.

23 It's an interesting little pattern that developed  
24 and I know two is not a pattern, but Detective Sailor added  
25 some things that weren't in his report and we also have an

Officer Badgujar who testified. And Officer Badgujar said -- and you may recall, he was out there in the alleyway when he was recovering this firearm from 4447 Pall Mall Road.

Detective Badgujar had written in his report that he had recovered the gun. You heard him, he didn't recover the gun, he obtained the gun later on, but he put in the report that he recovered the gun. Actually, some other detective recovered that gun and Detective Badgujar said, well, I didn't put that in the report, it wasn't necessary. He's the one that finally obtained the gun and took it to be examined.

It's just another incident where if we just took it at face value, we would think that Officer Badgujar went over and picked up that gun from the trash can lid, but that isn't what happened. He was handed it by another detective who actually was in the alleyway. That's the gun Kenneth Jones had in his pants that day.

April 3rd, 2013, the records are in evidence. Detective Hayden said that he examined the records and he found a series of text messages. You will recall that Wesley Jerel Brown was a student at University of Maryland, he was involved in some incident at the Mirage nightclub and through a series of good law enforcement, they located him at University of Maryland, tag readers and what have you. And they found out he was a college student at the University of Maryland and he had a Lexus, a car, and that tag showed up on

1 tag readers. And they went down to -- they wanted to talk to  
2 him.

3 Well, when Detective Bradley Hood goes to talk to  
4 Mr. Brown, takes a swing at him and he runs away. He had to  
5 be subdued later on. They get a search warrant and they  
6 search his dorm room and they find the gun. And lo and behold  
7 it's not a .380, it's not a .357, it's a .22. And as I said,  
8 you will also find out that Mr. Brown was selling drugs and  
9 there's virtually no evidence that Mr. Jones ever provided any  
10 firearm to Mr. Brown. And again, there's no link to BGF.  
11 That's Mr. Wesley Jerel Brown. That's the gun they found in  
12 his dorm room, a .22.

13 Now, there's been a lot of talk about this, and if  
14 you'll indulge me for a few moments. On May 7th, 2013, Trevon  
15 White, known as Country, was found sitting on the front steps  
16 of his house -- of a house, 214 East 22nd Street, suffering  
17 from gunshot wounds. And there's no eyewitnesses, Detective  
18 Jackson, who we heard from yesterday, said he was the  
19 investigating detective and he had no leads. There was a cell  
20 phone found at the scene, don't know whose it is. But it  
21 yielded no results and there was no link found, as Detective  
22 Jackson testified yesterday, between that phone or any phone  
23 and Mr. Jones. Your recollection will control.

24 There was a lot of rumors in the neighborhood.  
25 We've heard all kinds of phone calls, we've heard phone calls

1 about people who had nothing to do with this, were in jail,  
2 out of jail, or who knows what they were doing. There was  
3 rumors that Ben Miller had something to do with it, there was  
4 rumors Kenneth Jones had something to do with it. Well, Ben  
5 Miller was there. Colin Knight, who testified on behalf of  
6 Mr. Jones, said he saw Mr. Miller sitting there on the steps a  
7 little bit above Mr. White, on the steps and behind him.  
8 Mr. White was shot from behind.

9 There was bottles found. It wasn't just bottles  
10 found on the steps there that had Mr. Jones's fingerprints,  
11 there was also bottles down at the end of the block with  
12 Mr. Jones's fingerprints on it. This is Mr. Jones's  
13 neighborhood. He was walking around the street, drinking, you  
14 know, sometimes bottles just fall out. That's all the  
15 evidence shows. Mr. Jones did not deny on the witness stand  
16 when asked whether he could have been there, he goes, yeah, I  
17 may have touched those bottles, I may have used those bottles.  
18 He didn't deny any of that.

19 Then we have Harry Caesar, and Harry Caesar -- Harry  
20 Caesar is a paid informant. He had a chance to maybe prevent  
21 the murder of Moses Malone and he didn't because he didn't  
22 want to blow his cover. He's selling drugs. He also lied a  
23 little bit about his finances to law enforcement. And then he  
24 testifies that he gets arrested for drugs and he's over at  
25 MRDCC, which is a Maryland corrections facility. He hasn't

1 seen Mr. Jones in a while and they pass each other in the  
2 hallway. And in less than one minute, Mr. Jones just decides  
3 he's going to confess to a murder.

4 Well, ladies and gentlemen, the world is a strange  
5 place and you've heard a lot of strange stuff in this, but the  
6 world doesn't work that way. When you haven't seen anybody  
7 for a long time, you don't just in 30 seconds or 20 seconds,  
8 oh, by the way, I'm going to confess to a murder.

9 You heard evidence about retaliations in this case.  
10 The rumors were that Ben Miller had something to do with it  
11 and the facts support that Ben Miller committed that murder.  
12 Ben Miller was murdered. He was murdered by Shawn Gregg and  
13 Lamontae Smith.

14 And after the Ben Miller murder, Shawn Gregg tells  
15 Wesley Brown that he had shot Miller because of his  
16 involvement in the White murder. That corroborates what  
17 happened there, that's the retaliation that some of these guys  
18 did. There was also -- the government presented some talk  
19 that there was some rivalry in the neighborhood. The facts  
20 are that this picture, and it's government's CP 29, taken from  
21 Mr. Brown's phone, Mr. White is the gentleman in the middle  
22 back row with his arms around Kenneth Jones and another  
23 individual, that probably -- I think that's Mr. Brown.  
24 Mr. Jones testified that Mr. White was his best childhood  
25 friend. That's fact. Why would he kill his best friend?

1 This picture, which is in the government's evidence, shows  
2 that Mr. White and Mr. Jones were good friends.

3 Come to the Thabiti Wheeler murder on March 2nd,  
4 2013. And you see that there was crime scene techs that  
5 showed up and Detective Kazmarek walked around the crime scene  
6 with the crime scene tech and they lifted some fingerprints.  
7 And you will see from this report, you'll have the paper back  
8 there, that the fingerprints found were Norman Handy and  
9 Tangier Hitchens. And there was a stipulation read to you,  
10 members of the jury, that said that they were the only  
11 fingerprints along with the victim's fingerprints and that  
12 Mr. Johnson, Mr. Jones, and Mr. McCants's fingerprints were  
13 not on that vehicle.

14 Detective Kazmarek, after receiving this report,  
15 starts looking for these two individuals, Norman Handy and  
16 Tangier Hitchens. He's doing what any good law enforcement  
17 officer would do, follow the evidence. What he does is, he  
18 puts out a wanted poster for Tangier Hitchens and he puts out  
19 a wanted poster for Norman Handy. Now, that was the work of a  
20 good law enforcement guy -- detective. And when Detective  
21 Kazmarek found these individuals and he talked to them, I  
22 asked him, your recollection is going to recall, that he  
23 didn't find either one of them to be credible when he was  
24 talking to them.

25 Again, the ballistic evidence shows that that weapon

1 was used in the Trevon White shooting. That firearm was never  
2 produced here. Some of the questioning by the firearms people  
3 about the process and quality of ECU, the Evidence Control  
4 Unit, and how safe it was and it's always available, we don't  
5 lose evidence, and goes on and on and on. Well, they lost  
6 that gun. Didn't show up in this courtroom.

7 Few days after the Trevon White murder, the name is  
8 not in here, but the government used the name and the witness  
9 testified, Breonna Lewis, Buffy testified. And if you read  
10 this, you would think that she was being threatened and  
11 harassed and whatever. Well, what happened is, on  
12 cross-examination, Ms. Lewis -- your recollection will govern,  
13 what you recall from the testimony, that there was no threats,  
14 she wasn't harmed, just a conversation with her, and I think  
15 Mr. Johnson was there. There was no real accusations.

16 June 29th, about a couple months after the shooting  
17 of Trevon White, the government presented a jail call between  
18 Mr. Handy, seems like he's everywhere, and Montel Harvey and  
19 they're talking about all kinds of things. One of them is in  
20 jail, one of them isn't, and they're just rehashing old -- old  
21 history. And they're talking about, as you'll see in the next  
22 couple slides, going out to shoot Kenneth Jones. Now, there's  
23 no eyewitnesses to the shooting of Kenneth Jones, there's no  
24 shell casings. Law enforcement didn't come in here and say,  
25 we found some shell casings that are consistently found at a

1 shooting that took place and we reviewed all these phone calls  
2 and they match up with the facts as Mr. Handy and Mr. Harvey  
3 are talking about. Again, Mr. Jones is no part of this.

4 Four or five days later, Mr. Brown and Mr. Harvey  
5 have a conversation about the same thing. Again, there's no  
6 law enforcement to support anything they're talking about  
7 here, no shell casings found. That's Mr. Brown, that's  
8 Mr. Harvey. And then there's talk in the summer, I don't know  
9 what date it was, Mr. Harvey and a couple other people tried  
10 to shoot Mr. Jones. Again, no police report, no  
11 investigation, no law enforcement officer testified that they  
12 were even called in to investigate.

13 October 5th, Lamontae Smith says that he was shot  
14 walking around the neighborhood having a soda with friends  
15 after he had been at a gas station and he was shot by Kenneth  
16 Jones. Well, you may recall Detective Gaskins testifying that  
17 part of his investigation, he started walking the crime scene,  
18 was to pull some of the videotapes from the gas station and  
19 from other locations. And Mr. Smith's story didn't hold up.  
20 He didn't go to the gas station, he didn't walk the path.

21 What he did do is he ran away after being shot and the  
22 detective was able to follow the blood trail. What Detective  
23 Gaskins couldn't confirm is what was Mr. Smith doing before.

24 Mr. Smith was interviewed by law enforcement three  
25 or four times over the next couple days and he lied and he

1 lied and he lied. He gave a very detailed description. Most  
2 liars don't throw in a whole description of 5'7", tall, thin,  
3 long hair. They don't throw in those kind of details. He was  
4 thinking of somebody specific and it sure wasn't Kenneth  
5 Jones, who's never been 5'7", never been thin, never had long  
6 hair. He then, when he realizes that he's possibly getting  
7 squeezed, he decides to throw Kenneth Jones into the mix  
8 because there's this little split in the neighborhood. You  
9 have 24th and Barclay and you have 22nd and Guilford. They  
10 might be two or three blocks apart, but they're worlds apart,  
11 and even Lamontae Smith, through all his stories, admitted  
12 there was a lot of friction.

13 You see in Government's SM 3, Wesley Brown's  
14 Facebook account. Page 2, that's Chop on the left. 24th and  
15 Barclay. You heard Mr. Jones testify he lived at 22nd and  
16 Guilford. You can see Mr. -- Chop down in the lower left at a  
17 party on Mr. Brown's Facebook account. You can see Lamontae  
18 Smith in the lower right, again partying. Mr. Jones isn't in  
19 any of those pictures.

20 This is Government's Exhibit SM 8, Gerald Johnson's  
21 Facebook account. There's Mr. Johnson and on the right is  
22 Lamontae Smith. And then at page 78 of that same exhibit,  
23 this is Mr. Smith again and he calls himself "Money-making  
24 Chop Lamont," also known as Lamontae Smith.

25 While we're talking about Facebook accounts, showing

1 you Government's Exhibit SM 10, this is Marquise McCants's  
2 Facebook account. If you recall, there was page after page  
3 after page after page of Mr. McCants thousands of friends.  
4 But not Kenneth Jones.

5 Now, regarding the retrieval of the gun, Officer  
6 Badgujar testified, and I've already hit on that, he didn't  
7 interview anybody. You didn't hear from everybody. You  
8 didn't hear from Mr. Cypress, you didn't hear from Courtney  
9 Carroll, who had possession of the gun. You only heard  
10 Officer Badgujar talk about it. And again, that firearm was  
11 never produced. Never produced. Didn't come in here again.  
12 It went to ECU, but didn't come out of ECU, and it sure didn't  
13 come into this courtroom. And ECU is supposed to be the  
14 protector of all evidence.

15 Another thing about the evidence: When the  
16 detectives all looked at the little envelopes, they didn't  
17 even open it up at first. The question was, do you  
18 remember -- and can you identify these objects? Oh, yeah,  
19 they're the casings or they're the bullets or they're the this  
20 or that from the scene. What they were looking at is the  
21 number at the top. They didn't open the envelope. They all  
22 opened it up and gave it a little bit of cursory look over.  
23 But they didn't know -- you could put a box of Cracker Jacks  
24 in there and they would have looked at that number and say  
25 whatever's in that envelope it's going to be good enough for

1 them.

2 Only Mr. Wagster, the firearms examiner, came in  
3 here and said that he was confident enough in his techniques  
4 that after he would look at something, he would put a little  
5 identification, a laser marking on there, so he knew -- so  
6 that he couldn't be asked, are you just looking at that number  
7 again? And he would say, well, I'm looking at the number, but  
8 I'm also looking at my little laser identification that I put  
9 on there, and he was confident certain roles matched with  
10 certain firearms. Ms. Bohlen said that she never did that.

11 The Fenner guns. The guns that were found on  
12 Mr. Fenner never walked into this courtroom. They were never  
13 brought in here. Again, presumably they went to ECU and they  
14 never came out again. I've talked about the drug conspiracy  
15 and I don't think I need to say anymore. Examine all your  
16 notes and examine all your recollection. You will see that  
17 other than Christopher Meadows, there has been no talk of  
18 Mr. Jones and drugs aside from Christopher Meadows.

19 Was it reasonably foreseeable to Mr. Jones that  
20 there was a drug conspiracy and that he was a knowing and  
21 willful member of that drug conspiracy? I submit to you that  
22 he wasn't.

23 Judge Bredar's going to talk to you again about  
24 presumption of innocence in a few minutes. And it says only  
25 by the government's presentation of competent credible proof

1 and whether they've met, in your judgment, their burden of  
2 proof, can you overcome the presumption of innocence. I'm  
3 going to leave you with four legal concepts that I want you to  
4 think about when you're examining the evidence. These will be  
5 in the instructions given to you in a little while by Judge  
6 Bredar.

7 The first one says you may not infer that the  
8 defendant is guilty of participating in criminal conduct  
9 merely from the fact that he associated with other people who  
10 were guilty of wrongdoing. Does Mr. Jones associate with  
11 other people who were guilty of wrongdoing? Yes.

12 Next one, mere similarity of conduct or the fact  
13 that they may have assembled together or discussed common aims  
14 or interest does not necessarily establish proof of the  
15 existence of a conspiracy.

16 The third, a defendant's mere presence at the scene  
17 of the alleged crime does not by itself make him a member of  
18 the conspiracy.

19 And finally, mere knowledge of or acquiescence  
20 without participation in the unlawful plan is not sufficient  
21 to make him a member of the conspiracy. These are the words  
22 that are going to be read to you by Judge Bredar and you're  
23 required to follow them when you're deliberating these  
24 concepts.

25 In the end, thank you for your attention. I'm going

1 to sit down, and later today I'm probably going to think of  
2 five or ten more things that I should have told you about.  
3 Then I'm going to wake up tomorrow morning and think of five  
4 or ten more things. But my time is done. You have a very  
5 important job to do. This wouldn't have taken nine weeks if  
6 it wasn't important. You wouldn't have seen the skilled  
7 presentation by these two prosecutors here, you wouldn't have  
8 seen the defense challenging every aspect of their case if it  
9 wasn't important. And in this case I ask you to find Kenneth  
10 Jones not guilty. Thank you.

11 THE COURT: Thank you, Mr. Bussard. Ladies and  
12 gentlemen, we'll take another brief recess. During this  
13 recess do not discuss the case with anyone. Do not discuss  
14 the case even among yourselves. Do not allow yourselves to be  
15 exposed to any news articles or reports that touch upon the  
16 case or the issues it presents. Avoid all contact with any of  
17 the participants in the trial. Do not make any independent  
18 investigation of the law or the facts in the case. Do not  
19 look up anything related to the case or its participants on  
20 the internet. Do not consult an encyclopedia or dictionary.  
21 Five minutes. Take the jury out.

22 (Jury left the courtroom.)

23 THE COURT: Five minutes, then we'll hear from  
24 Mr. Francomano, then we'll take the lunch break, then we'll  
25 hear the rebuttal.

1 (A recess was taken.)

2 THE COURT: Ready for the jury, Mr. Francomano?

3 MR. FRANCOMANO: Yes, Your Honor.

4 THE COURT: Bring them in, please.

5 MR. BUSSARD: Your Honor --

6 THE COURT: Hold on a second. Bring the CSO back.

7 MR. MARTINEZ: Don't worry about it.

8 THE COURT: Mr. Bussard.

9 MR. BUSSARD: Your Honor, I just wanted to put on  
10 the record that what I had said turns out to be not  
11 objectionable to the government, but I'm not asking for any  
12 relief on that as a result of what was said. I don't know how  
13 you put the genie back in the bottle, so I'll just leave it  
14 alone. I appreciate the government's candor.

15 (Jury entered the courtroom.)

16 THE COURT: Mr. Francomano, on behalf of  
17 Mr. McCants, do you wish to make a closing argument?

18 MR. FRANCOMANO: We do, Your Honor.

19 THE COURT: You may proceed.

20 MR. FRANCOMANO: Thank you.

21 Good afternoon, ladies and gentlemen of the jury.

22 JURORS: Good afternoon.

23 MR. FRANCOMANO: We're finally here, we're at  
24 closing. What I want to make clear though is, Mr. McCants is  
25 not charged with murder. He's not charged with attempted

1       murder. He's not charged with robbery. He's charged with  
2       conspiracy racketeering, drug conspiracy, and a felon in  
3       possession of a handgun.

4               Now, the government said yesterday that joining a  
5       gang that did bad things, knowing that the gang did bad things  
6       is a conspiracy. It's not that simple, especially in  
7       Mr. McCants's case. In Mr. McCants's case, number one, you're  
8       going to have to find out -- or deliberate and discuss, is he  
9       BGF? Secondly, you're going to have to deliberate and  
10      discuss, was he BGF after he turned 18?

11              Now, the government alleges that this conspiracy  
12      took place from 2005 to 2017. In 2005, Mr. McCants was 12  
13      years old. After closing, Judge Bredar is going to read to  
14      you a number of jury instructions. The one on the screen is  
15      one of them that discusses Mr. McCants's age. In order to  
16      prove Marquise McCants guilty of the conspiracy charged --  
17      conspiracies charged, the government must establish beyond a  
18      reasonable doubt that -- either that Marquise McCants became a  
19      member of the conspiracy after the age of 18, or if he became  
20      a member of the conspiracy prior to the age of 18, that he  
21      ratified or affirmed his prior participation in that  
22      conspiracy, meaning that if you believe he was a member of BGF  
23      prior to turning 18 years old, he must perform some act or  
24      some conduct affirming that he has ratified his position in  
25      the gang after he turns 18.

1 Marquise McCants's conduct prior to age of 18 cannot  
2 by itself sustain a finding of guilt as to the conspiracy  
3 counts. That means if he was in the gang prior to 18, and you  
4 believe that nothing ratified or affirmed his conduct after  
5 that, those acts, you cannot find him guilty of the  
6 racketeering prior to 18.

7 What this means is, you're going to have to separate  
8 his conduct into two separate groups, prior to 18 and post 18.  
9 Now, you've heard two months about tattoos: tattoos of 276,  
10 tattoos of a gorilla, of George Jackson. There's no question  
11 Mr. McCants has tattoos of 276 on his body. He has a tattoo  
12 of a gorilla, he has a tattoo of George Jackson. He testified  
13 he got those tattoos when he was 15 years old. This is  
14 undisputed testimony. No one has come in and testified, no,  
15 that's not true, Mr. McCants got those tattoos after he was  
16 18.

17 YGF is not a gang. YGF has no structure. YGF has  
18 no -- is not an enterprise. You've heard testimony from  
19 Mr. McCants that it was a bunch of people in the neighborhood  
20 that hung out and they just got the moniker YGF. YGF was from  
21 2005 to 2007. Mr. McCants was 12 to 14 during that time  
22 range. This is -- the one that's on the screen right now is  
23 the government -- excuse me, Johnson's exhibit that was used  
24 during the entire trial and you'll see that when you go back.  
25 This next exhibit was put up by the government yesterday in

1 which now Mr. McCants's picture is there and Mr. Cornish's has  
2 been removed.

3 You've heard from over 50 witnesses in this case,  
4 over 500 pieces of evidence have been entered. Of those  
5 witnesses you've heard from, ten have criminal records and  
6 eight are from the BGF. You heard from Michael Gwaltney, BGF  
7 member. He didn't say one word about Mr. McCants. You heard  
8 from Brian Rainey. Once again, BGF member, didn't say one  
9 word about Mr. McCants. Heard from Harry Caesar, I'm sure you  
10 remember Harry Caesar's testimony. Once again, didn't say one  
11 word about Marquise McCants. Kennethfer Stokes, nothing about  
12 Marquise McCants. Joseph Davis, admitted BGF member, said  
13 nothing about Marquise McCants. In fact, I don't know if you  
14 remember this, it was so long ago, but when he was asked, do  
15 you know Marquise McCants, he said McCants? He had no idea  
16 who he was. Five witnesses called from the government and all  
17 these five have no idea who Mr. Marquise -- or Mr. McCants is.

18 Now, I talked to you in opening about witness  
19 credibility. And I explained that credibility is going to be  
20 a big issue in this case. And it's going to be the most  
21 important part of your job. How did the witness act on the  
22 stand? How did they testify on direct versus  
23 cross-examination? Does the witness have a reason to lie?  
24 Was the witness even there when something happened? And  
25 that's important because most of the witnesses the government

1 brought to testify weren't there when these things happened.  
2 Do they have a criminal record? Nearly all the civilian  
3 witnesses who testified have a criminal record.

4 Michael Gray, you heard him testify, he was the  
5 first person the government called. He testified that he was  
6 the founding member of BGF in Maryland. One of the highest  
7 ranking members of the BGF, the Hodari. He testified that  
8 crossed arms aren't necessarily BGF, said it could be  
9 considered a greeting in jail. He met with the government and  
10 he testified that he met with the government eight times in  
11 2015 to talk about the BGF, to talk about Greenmount. Not  
12 once did he bring up Digga or the name Marquise or the name  
13 McCants.

14 On May 16th he testified in federal court for an  
15 entire day. Not once did he bring up the name Digga, Marquise  
16 McCants. He met with the government five more times in 2016  
17 to talk about BGF and Greenmount. Not once did he talk about  
18 Digga or Marquise McCants. And then he testified that he was  
19 shown a picture on August 19th, 2016 of Marquise McCants. And  
20 he said, I recognize his face. That was it. And then he  
21 testified in another meeting, November 1st, 2017, and again,  
22 he was shown a picture of Marquise McCants. And again, he  
23 says, I know his face. And then at the end of the interview  
24 he testified somebody said the name Digga to him and then  
25 that's when he remembered he's BGF.

1 Doesn't say when he was supposedly BGF, no personal  
2 knowledge Mr. McCants is BGF. Someone told him that  
3 Mr. McCants was BGF. He can't even tell you who told him that  
4 McCants was BGF. No evidence to show that somebody else told  
5 him that Marquise McCants was BGF. He's not able to give any  
6 personal information about Mr. McCants, was not able to give  
7 any information about how he joined the gang. And at trial  
8 when he was asked, have you ever heard of him committing  
9 crimes, and he said, the only thing I ever heard about Digga  
10 was that he was a mischievous child. He testified 13 -- he  
11 testified at 13 prior meetings with the government, an entire  
12 day at trial, and didn't once say his name. He admitted to  
13 prosecutors that he lied.

14 Troy Kellam. You heard testimony from Troy Kellam,  
15 he testified in a BGF trial on 6/1 -- June 1st, 2016. In that  
16 trial he didn't say a word about Marquise McCants. Testified  
17 he met with the government on June 17th, 2015, testified he  
18 spoke about BGF, spoke about the Greenmount Regime. He  
19 actually named 23 members of the Greenmount Regime. He  
20 testified to all their names. You know whose name he didn't  
21 say? Marquise McCants. Met with the government on four --  
22 April 11th, 2017 and was shown a picture of Marquise McCants,  
23 and he said, I don't know him.

24 Then on November 24th, 2017, after trial had already  
25 started in this case, he tells the government about this

1 magical book that has every BGF member in it from Greenmount  
2 specifically. And all the sudden he remembers, oh, yeah, I  
3 saw Marquise McCants in this book. He doesn't say what year  
4 he saw the book, doesn't say when he saw the book, doesn't say  
5 where he saw the book, doesn't say who has the book. There's  
6 been no evidence to show this -- this book has never appeared  
7 here in this courtroom. No other witness has testified that  
8 this book exists. The head of BGF, Michael Gray, came in here  
9 and testified, he didn't even say that there's such a thing as  
10 this book that has people's pictures in it. Do you know why?  
11 Because it doesn't exist. It makes no sense. It's not  
12 logical to have a face book of people in a gang. Mr. Kellam  
13 also admitted to lying to prosecutors.

14 Lamontae Smith, Chop, testified he couldn't remember  
15 any specific occasions when he saw Mr. McCants with a gun.  
16 And after five questions from the government he finally says,  
17 yeah, I saw him with a gun, like twice. And he can't remember  
18 where, he can't remember when he saw him with this gun, he  
19 can't even remember what year it is. We asked him, was it  
20 2007? I don't know. Was it 2010? I don't know. Was it  
21 2015? I don't know. Testified that Carrdai told him that  
22 McCants shot a guy in 2006. 2006, Mr. McCants was 13 years  
23 old. No evidence whatsoever has been presented that anyone  
24 was shot by Mr. McCants, when they were shot by Mr. McCants in  
25 2006.

1                   You didn't hear any ballistics, didn't hear any  
2 witnesses. There's no pictures, no guns, no shell casings  
3 have been introduced in evidence. Nothing to show you that a  
4 murder even was committed in 2006, much less that Mr. McCants  
5 had anything to do with it or committed it. Then on  
6 cross-examination Mr. Smith said, well, Carrdai was high and  
7 that he didn't believe him when he told him Mr. McCants  
8 committed a murder.

9                   The government called a witness that testified he  
10 didn't even believe what he was saying, then he tells you  
11 about a stabbing. He tells you that someone named Noodles  
12 told him that McCants stabbed someone in jail. It's the only  
13 time that the name Noodles came up in this trial at all. Not  
14 one other person mentioned the name Noodles in this case. No  
15 evidence that was presented by the government or any witnesses  
16 that anyone was stabbed in a Baltimore City detention center,  
17 much less Mr. McCants stabbed someone. Mr. Smith testified,  
18 has no idea what year this happened. There's no evidence that  
19 Mr. McCants stabbed anyone. There's been no testimony from  
20 any witnesses. And we didn't hear anything from Noodles.

21                   Mr. Smith's prior testimony, he testified about a  
22 meeting with the government on April 14th, 2016. At that  
23 meeting he was asked to identify all members of the BGF in  
24 Greenmount. I asked him -- he testified, he named 19 people,  
25 but didn't say a word about Marquise McCants. He testified

1 that he met with the government on May 11th, 2016. Once  
2 again, didn't say anything about Marquise McCants. At the  
3 grand jury, the same day of that meeting, he went in and  
4 admitted he testified there but didn't say anything about  
5 Marquise McCants.

6 He talked about the younger group. And you've heard  
7 about the split, that there was a younger group and an older  
8 group. And he named the individuals in the younger group when  
9 he testified. He said Telly, Nate, Norman, Wes, Hood,  
10 Carrdai. I asked him, well, did you name the older group as  
11 well? He testified he named Joe, Slay, Nut, Big Mike, Mike  
12 Mike. Didn't say anything about Mr. McCants. Then on  
13 10/26/17, he testified that he was brought back to the  
14 government's offices. And now he tells them for the first  
15 time to anyone ever that Mr. McCants murdered somebody and  
16 stabbed somebody in jail. And he's never mentioned this  
17 before at any other interview or at any other time. And he  
18 testified to that.

19 Christopher Meadows. Everything that Christopher  
20 Meadows testified to about BGF was 2008 and prior. He  
21 testified that McCants -- Mr. McCants committed an e-pill  
22 robbery when he was 12 years old. Testified that he was  
23 selling drugs, sold drugs for Geezy. He met with the  
24 government on two separate occasions to talk about BGF  
25 Greenmount and didn't once mention Mr. McCants. He admitted

1 to testifying on September 25th, 2015 and talking about BGF,  
2 specifically the Greenmount BGF, and not mentioning  
3 Mr. McCants.

4 He admitted to changing his testimony in a prior  
5 case to the police. He did tell the truth about one thing, he  
6 said Mr. McCants didn't transfer over to BGF because he was a  
7 juvenile. All four of these witnesses have a number of things  
8 in common. One, they all testified at meetings or trials  
9 involving BGF where they never mentioned Mr. McCants. They  
10 all testified that the only time that they mentioned  
11 Mr. McCants was a part of BGF were crimes that he committed  
12 dealing with BGF were either weeks before trial started or in  
13 Mr. Smith's case when trial had already started.

14 All of them have prior convictions. Not one of them  
15 has personal knowledge that Mr. McCants was in BGF. Not one  
16 of them saw or heard that he was at a meeting. Never saw or  
17 heard of him paying dues to anyone in BGF. No one ever heard  
18 him say the oath. Never heard anyone else tell them that he  
19 said the oath to them. They couldn't identify any of the  
20 sponsors or his sponsors in the gang, whether or not he  
21 sponsored someone in the gang, not one witness testified and  
22 said, I personally know Mr. McCants is in the BGF because he  
23 told me. Not one person came in and said that.

24 Facebook. The government contends that the Facebook  
25 page listed as Digga McCants is Mr. McCants's Facebook. First

1 log in date was October 17th, 2010. We all know Mr. McCants  
2 was in jail at that time. There are a number of  
3 communications that are in evidence that you've seen  
4 throughout this trial.

5 "This Digga?"

6 "No, Keyshay. But I can tell him what you want me  
7 to."

8 "Tell him I need his info. Cool. What? Who's  
9 this?"

10 "His son's mother."

11 "It's your little sister, hi noni, Digga is locked  
12 up. This is his girlfriend. You want me to tell him  
13 anything?"

14 "My son, I need you. Digga, I need some money.  
15 Damn, you, yo, what, did I do something to you?"

16 "This is Keyshay, Mr. James, do you want his  
17 number?"

18 Mr. McCants testified that he had no access to this  
19 Facebook page, never put anything in the Facebook page. It is  
20 absolutely clear from these communications that this Facebook  
21 page is Keyshay Oliver, the mother of his son. There's no  
22 evidence that this page belongs to Mr. McCants. On the  
23 contrary, all the evidence points to Keyshay Oliver as a  
24 person who is running this page, putting pictures on the page.  
25 The government cannot admit that they are wrong on this, but

1 it is painfully obvious this is Ms. Oliver's page.

2 They showed you a post from Roscoe, who is in BGF.  
3 Roscoe thinks he's writing to Mr. McCants and says "GMB for  
4 life" in the highlighted section. GMB, not BGF, because he  
5 knows Mr. McCants is from Barclay and he knows he's not BGF.

6 All the social media pictures are put in evidence,  
7 they have one of Mr. McCants putting his arms across his  
8 chest. He testified, yes, I can remember this picture because  
9 the clothes are so out of date, it's from 2008. Of all the  
10 pictures you've seen from Instagram, Facebook, from everybody  
11 in this case, the government shows you one picture.

12 There are a number of pictures that were entered  
13 into evidence from cell phones. There are five pictures of  
14 Mr. McCants entered from Shawn Gregg's cell phone. Of these  
15 five pictures, he's here with Shawn Gregg. No gang signs,  
16 nothing to do with BGF, no gang shirts. Another picture,  
17 standing with friends. No gang signs, no BGF paraphernalia.  
18 Picture of him and his girlfriend, obviously no gang signs  
19 here. Holding up the peace sign. No gang signs, not  
20 representing whatsoever, nothing, not wearing any clothes.  
21 Another picture with him and Shawn Gregg and a friend outside  
22 the basketball courts, throwing the peace sign again.

23 The government showed you this picture, timeline of  
24 murders and shootings. Now, Mr. McCants was in jail --  
25 Mr. McCants was in jail or under the age of 18 for every

murder and shooting but for Mr. Bess, every single one of these. Mr. McCants is not a suspect in any of these murders. Mr. McCants is not a suspect but for Gregory Bess in any of these shootings.

Mr. McCants, since his 18th birthday, has spent most of his time in jail. He's spent ten months on the street since his 18th birthday. This is something he is not proud of, trust me. It's nothing to be proud of. It is just a fact.

Moses Malone is the centerpiece of this case. That's the one thing I agree with the government about. Mr. McCants has absolutely nothing to do with the murder of Moses Malone. In fact, he was in jail at the time.

May 9th, 2008, the government brought in -- there was an assault of Jerome Brice that occurred on that day. Mr. McCants was 15 years old at the time. Ms. Scott testified that she witnessed the assault. On cross-examination she was asked about her prior statements who stabbed Mr. Brice, that she couldn't see because she was too far away, and she kept responding, I'm not sure. She testified that she met with the government on 8/15 -- or August 15th, 2017 and when asked on cross-examination about that meeting, she was asked if in that meeting did she say she was uncertain if Mr. McCants stabbed Mr. Brice, and her answer was, I'm not sure.

She also testified, at that meeting she was asked,

1 who is in BGF? And she named Wesley, Ronnie, Joshua -- or  
2 excuse me, Wesley, Ronnie, Joshua Carroll, Carrdai, Norman,  
3 Montray McNair, Shareiff Dupree. She didn't say Marquise  
4 McCants.

5 Mr. McCants pled guilty to assault in the first  
6 degree in Cecil County. He explained that he pled guilty by  
7 way of what's called an Alford plea. An Alford plea is a  
8 guilty plea, but the person proclaims their innocence of the  
9 crime. They admit that the prosecution has enough evidence to  
10 prove that he is guilty though. The only testimony about that  
11 incident was from Corporal Finch, Cecil County police officer.  
12 He testified that he responded to the home in Elkton,  
13 testified that four people came running out. Two said they  
14 have a gun, followed one person to Quail Court and he lost  
15 him. Found Mr. McCants in the woods and then on  
16 cross-examination, I asked him, did he admit to committing a  
17 crime? And he said no.

18 Mr. McCants testified he pled guilty to this crime  
19 by way of an Alford plea, and he said it: I'm a black man in  
20 Cecil County, said he's being harassed in jail. He said his  
21 public defender told him he was looking at 25 years if he  
22 didn't plead. And that's his reason, he took the Alford plea.

23 Even if you believe that Mr. McCants committed this  
24 crime, there's not one piece of evidence at all that has  
25 anything to do with the BGF. The government showed you a

1 letter written by someone else, by Roscoe. Now, the letter  
2 was found in 2013. Obviously it was never mailed. We have no  
3 idea when it was written. Roscoe didn't come in to testify  
4 about what it is. It has the words Eusi Gayedi Jamaa on it,  
5 so automatically Mr. McCants is BGF. Well, that's just not  
6 logical. He didn't write it. He had nothing to do with this  
7 letter. Because it has the name Digga, all the sudden he's  
8 BGF. And that's kind of the mentality here.

9 There's a second letter that the government put on  
10 two days ago or on -- maybe yesterday, and this letter was  
11 allegedly from him to his girlfriend. Mr. McCants testified  
12 he didn't write it. The government hasn't proven that he  
13 wrote it. There's no handwriting expert that came in here and  
14 said, yes, this handwriting matches other exemplars we have  
15 from Mr. McCants and it is in fact a letter he wrote. No one  
16 has testified to that. No one came in and testified this is  
17 similar writing, I believe it's Mr. McCants's handwriting. No  
18 one has said that at all.

19 Also, it's strange this letter is going out and it  
20 has a received stamp on it and the date Mr. McCants testified,  
21 11/15. There's a lot of questions about this letter. There's  
22 no testimony that this letter was found in Mr. McCants's jail  
23 cell. There's been no testimony as to where this letter was  
24 found.

25 Mr. McCants admitted that he was found guilty of

1 possession of marijuana in a Baltimore City detention center.  
2 He pled guilty to that. There's no evidence or testimony that  
3 that had anything to do with BGF. In fact, a witness, Dequan  
4 Shields, came and he testified that it had nothing do with  
5 BGF. Mr. McCants testified that it had nothing to do with  
6 BGF. You haven't heard from a witness or anyone to say, oh,  
7 yeah, that weed in jail on July 4th, 2014, that was BGF.  
8 Nobody's testified to that.

9 Text messages from Shawn Gregg. There were text  
10 messages that Mr. McCants admits that he was talking about  
11 marijuana when he was texting Shawn Gregg. He was talking  
12 about Blueberry Kush, but once again, there's no evidence that  
13 Mr. McCants or Mr. Gregg completed the transaction, money was  
14 given for marijuana. There's been nothing to show that either  
15 one of them received marijuana or got money for getting  
16 marijuana. And there's no evidence that this has anything to  
17 do with BGF. No one's come in and testified, well, this was a  
18 drug deal and it was a BGF drug deal.

19 There's nothing in the text messages at all about  
20 BGF. There's nothing in the text messages about furthering  
21 the objectives of BGF. Nothing in the text messages about  
22 paying dues. Nothing about, hey, you missed a meeting last  
23 week, you've got to show up to the next BGF meeting. Nothing  
24 about meetings. There's no pictures, as we showed you, in  
25 Mr. Gregg's phone of Mr. McCants doing anything that has

1 anything to do with BGF. Shirts, signs, X crosses.

2 Mr. McCants testified that, yes, we were talking about  
3 marijuana, but I didn't really have it. And it really had  
4 nothing to do -- or it had nothing to do with BGF.

5 There are a number of phone calls that you've  
6 listened to between Mr. McCants and Mr. Brown. Now, Wes Brown  
7 is the father of his sister's children. Mr. McCants went to  
8 school with Wes Brown. It would be more unusual for him not  
9 to talk to him than to talk to him. Mr. McCants said he  
10 thought Wes Brown was BGF. But he also testified that just  
11 because somebody's BGF you don't automatically stop being  
12 friends with them.

13 On the calls, they talked about gossip on the  
14 street. Mr. McCants used the word "Oatmeal" in one of the  
15 calls. He testified he admitted he knew what the oath was and  
16 how BGF used it. He also explained that the Bloods did as  
17 well, but he also explained that he knew from the Bloods they  
18 also had their own type of oath called Soo Woo. And the  
19 Muslims had their own type of saying called As-Salaam-Alaikum.

20 Now, when he was using the word Oatmeal, he was  
21 explaining why Man Man got into a fight because another  
22 individual couldn't say the oath. Now, he never testified  
23 that he knows what the oath is. But being where he grew up  
24 and being in jail, he's heard what an oath is, and he knows  
25 the other gangs, the Bloods, the Muslims, Crips, just from his

1 upbringing and from where he's been.

2 Mr. McCants talked about being heavy. And he got up  
3 here and admitted, yeah, I was talking about a gun. But he  
4 also said, I didn't really have a gun on me, I just wanted --  
5 I don't trust anyone, and I wanted to make sure that if  
6 anybody was going to come up on me that I was tough, you know,  
7 and they wouldn't try and do something like that.

8 The phone calls from Mr. Burris. You heard phone  
9 calls from Mr. Burris in which the beginning of the call -- it  
10 gives an insight into how their world really works. "Man,  
11 n-word heard so many stories, man, n-word ain't know what to  
12 believe." So the way that the things happen on the street is,  
13 there are so many different stories floating around about  
14 every single person, that in this conversation you can see  
15 nobody knows what to believe about what's being said. They  
16 said he was dead, he being Mr. McCants. They said he was  
17 dead, they said he was locked up. Well, obviously he wasn't  
18 either because he was on the phone.

19 Now, there was an exchange where they were  
20 discussing Chop, where Mr. Burris is ranting about Chop and  
21 he's going to put in work. Mr. McCants says after that 14  
22 line rant, "right." He testified, I really wasn't even  
23 listening to what he was saying, he was just going on and on.

24 The text messages from Mr. McCants's phone. There  
25 are 641 text messages from his phone. They picked out two.

1 The message they had the letter J: "Bro, J shit, she prolly  
2 did send Steve to SQ." So they're saying because the letter J  
3 is in a text message of 641 different text messages,  
4 Mr. McCants must be BGF. He explained that this text had  
5 nothing to do with BGF. And there's been no evidence  
6 presented by anyone that this text had something to do with  
7 BGF. The person who it was sent to, Trick Boy, he didn't come  
8 testify. So the letter J is what the government's going to  
9 hang its hat on.

10 There was a second text message in which he's  
11 saying, "This n-word I be getting the C from, yo, we got to  
12 fix him, bro." Now, this is a text message in which he's  
13 talking with an individual, Mook, who turns out his name  
14 actually is James Harris (sic). Mr. McCants testified they're  
15 talking about cash or coins. Once again, it's uncontradicted  
16 evidence. Okay. No one has come in and said, no, no, that C  
17 means cocaine. Okay. Mr. Harris didn't come in and testify,  
18 no, no, we were talking about cocaine.

19 Now, the government has now said, no, they were  
20 planning the robbery of a cocaine dealer. There's been no  
21 evidence whatsoever of a robbery of a cocaine dealer. There's  
22 been no evidence that Mr. McCants or Mr. Hair had anything to  
23 do with robbing a cocaine dealer. This is just a theory that  
24 the government just pulled from out of the air and said, this  
25 is what we believe this is about, so believe this. Well, why

1 isn't it just as believable to believe Mr. McCants, who is  
2 actually the one on the phone or the one making the text  
3 messages?

4 And that's the big problem in this case. Every  
5 phone call, every text message is interpreted by the  
6 government to mean BGF or it's BGF related. But there's an  
7 alternate explanation for all the text messages, for all the  
8 phone calls. And Mr. McCants has given those explanations.  
9 And the government has not contradicted his explanations with  
10 other witnesses coming in.

11 There are phone calls between Mr. McCants and  
12 Deandre Dorsey. Now, the government wants you to believe that  
13 Deandre Dorsey is BGF. Sergeant Landsman testified that he  
14 heard Dorsey using BGF terms on a wiretap. Those calls were  
15 never played. We didn't hear those calls about him talking  
16 about BGF terms. No one came in and testified that Dorsey is  
17 BGF. Mr. McCants testified, in fact, that he was a BGF and  
18 testified that he didn't think he was BGF, didn't know he  
19 was -- rephrase that. Mr. McCants testified he didn't know if  
20 he was BGF. Once again, that's uncontradicted.

21 They want you to believe that Mr. Dorsey is BGF  
22 without giving you any proof. You heard six phone calls  
23 between Mr. McCants and Mr. Dorsey. They're talking about  
24 what was happening on the streets, about what was happening in  
25 their lives. They talked about a person named Pinky, who may

1 have had a gun on him. They were talking about clutching.  
2 Mr. McCants admitted that on the calls he was talking about a  
3 gun. He said blickety, jimmyrod, nickel. These are all  
4 references to guns, and he admitted that. He explained though  
5 that he was talking about that or talking about jimmyrods and  
6 guns because he was with a group of people where he's playing  
7 dice in the county, and he wanted to make sure all those  
8 people heard that because he wanted to make sure they wouldn't  
9 rob him or try and take money from him.

10 But the government wants you to believe that every  
11 single word is gun or BGF. For example, they said, well, he  
12 said black jacket, black jacket has to be a gun. He said dirt  
13 bike, dirt bike has to be a gun. Sometimes a dirt bike is  
14 just a dirt bike.

15 Testified on two -- you never heard them talk about  
16 Gregory Bess on any of these calls, not a nickname of Bess,  
17 nothing associated with Bess, no evidence that Bess crossed  
18 BGF, no evidence that Bess was involved in BGF in any way, and  
19 there's no motive why BGF would want to shoot Mr. Bess.

20 You heard four phone calls from Mr. McCants when he  
21 was in jail. He talks about PDR, which is Pioneer Drive. He  
22 explained what a willow was, and a willow was his stash can  
23 where he kept marijuana, his money in it. And he hid it and  
24 he hid it in a relatively entertaining place. He explained  
25 that it was where the hair was and he explained that the hair

1 was actually a wig of the girlfriend's of Marty, who is Trick  
2 Boy, and that's what he was explaining to him to get the stash  
3 can out of the house.

4 Now, on February 7th, 2017, Detective Landsman  
5 testified that when they're talking about Superbowl they're  
6 actually talking about a shooting. Mr. McCants testified that  
7 he placed a bet with his friend Malik before he was arrested.  
8 He testified he actually bet on the Patriots. The day after  
9 he was arrested the Superbowl was played. He was talking to  
10 Malik on the 7th, Superbowl was on the 6th, which makes more  
11 sense in that conversation. He didn't know what the score was  
12 because he was in lock up, and he needed the money because he  
13 needed the money for commissary.

14 All the phone calls and text messages from 2013 to  
15 2017, there's only one time it's uttered -- only one time a  
16 word is uttered that has anything to do with BGF and that is  
17 Oatmeal. And Mr. McCants explained that and the government's  
18 trying to take that out of context.

19 There's been no evidence whatsoever that these calls  
20 had anything to do with BGF. Not once in any of the calls is  
21 BGF being mentioned. They're talking about gossip on the  
22 street, about women they were with, people who got into  
23 trouble, people who were coming home. These are things that  
24 are important in his life, in their life. They didn't discuss  
25 who owed money to BGF, they didn't discuss if dues were paid.

1 They didn't talk about who had to be disciplined by BGF. They  
2 didn't talk about the inner workings of the gang. You didn't  
3 hear them talking about someone who disrespected BGF and they  
4 had to get him. The term green light was never used.

5 Mr. Bess, as I said, has no affiliation whatsoever  
6 with BGF. There's no evidence that he was targeted by BGF.  
7 CCTV cameras just before the shooting, there's no person  
8 identified as Mr. McCants caught on those CCTV videos.  
9 Detective Gauze testified that he received a tip about a  
10 person named Bones in reference to Mr. Bess's shooting. Never  
11 heard anything about Bones. Now, sometimes you have to judge  
12 the credibility of police officers as well. Now, it's your  
13 decision whether to accept the testimony of a law enforcement  
14 witness and to give that testimony whatever weight, if any,  
15 you find it deserves.

16 Now, Detective -- excuse me, Sergeant Landsman  
17 testified he was surveilling Mr. Dorsey from late 2006 to  
18 Mr. McCants's arrest on February 5th, 2017 and didn't once see  
19 them get together. He admitted that the police were not  
20 watching the house at Pioneer Drive and that anyone could have  
21 come and gone from the house from February 5th to the second  
22 search warrant on February 9th, 2017 without their knowledge.  
23 Detective Landsman admitted that when he got into the house  
24 the blinds were all drawn. He admitted that when he went up  
25 to the house the door was shut.

1 Detective Clark testified he heard someone yell out  
2 the house "I got an f'ing gun." Detective Clark admitted it's  
3 not in any written reports. Detective Clark said, no, it's  
4 not in either of the search warrants, the one on February 4th,  
5 another one on February 8th. Admitted he didn't say anything  
6 about that statement until he met with the government after  
7 all this happened. He admitted he didn't tell anyone and he  
8 heard that coming from the house. And on cross-examination I  
9 asked him, that's pretty important, isn't it? And he said,  
10 yes, but he didn't tell anyone.

11 Not one of the other 12 officers at the scene came  
12 to testify to say that they heard anyone from the house  
13 yelling "I got an f'ing gun." In fact, Detective Landsman,  
14 who was there the entire time, didn't testify that he heard  
15 Mr. McCants say, "I got an f'ing gun." Trooper Boyce, who was  
16 the K-9 officer, testified he didn't hear anything coming from  
17 the house.

18 Now, Mr. McCants is suspected of a shooting, but  
19 when he's arrested they don't test him for any gunshot residue  
20 on his hands, on his clothes. Trooper Boyce testified that  
21 Sergeant Landsman ordered him to scan the car in the driveway.  
22 Now, the drug dog Max, which is a drug dog, did scan the car.  
23 And the drug dog alerted to drugs in the car. There were no  
24 drugs found in the car. There were two tickets that were  
25 found in that car that had nothing to do with Mr. McCants. No

1 paperwork in the car belonging to Mr. McCants. No clothing in  
2 the car belonging to Mr. McCants. And then Sergeant Landsman  
3 said the guns in the car were Mr. McCants's. Then he admitted  
4 there were no fingerprints or DNA of Mr. McCants on guns. He  
5 said, well, based on prior calls, it showed that he had been  
6 in possession of those guns.

7 You never heard those prior calls, did we? The car  
8 was not registered to Mr. McCants. There are no records  
9 connected, the car -- connecting the car to Mr. McCants. No  
10 fingerprints or DNA found in the car, outside the car, of  
11 Mr. McCants. No one ever seen him driving the car. There's  
12 no evidence whatsoever to support any statement that he had  
13 anything to do with that car or the guns in the car.

14 There are a number of items found in the house. But  
15 no drugs. There were no fingerprints or DNA of Mr. McCants's  
16 found on any of the bullets in the home. No fingerprints or  
17 DNA of Mr. McCants found in the black bag he was supposedly  
18 carrying around. No fingerprints or DNA found on any of the  
19 drug paraphernalia, the gel caps, the sifters, any of the drug  
20 paraphernalia in the house.

21 Now, a gun was found at 5617 Pioneer Drive five days  
22 after the shooting of Gregory Bess. The gun was found in  
23 pieces. Well, Detective Landsman testified he had to cut  
24 through a wall and through the floorboards to get to the gun.  
25 He testified that all the pieces of the gun were recovered.

1 He specifically mentions that even the spring was recovered.  
2 He stated that the gun found in the house could be fired,  
3 because all the pieces were there, they just need to be put  
4 back together. He said it was sent to the unit, the firearms  
5 testing unit, and it was test fired without any other pieces  
6 from any other gun.

7 Then he went on to say that the gun was not tested  
8 for fingerprints or DNA. And after showing him the laboratory  
9 report that it was tested for DNA, he did admit, yes, it was  
10 tested for DNA. Well, there was no DNA of Mr. McCants on the  
11 gun. The ballistics expert, James Wagster, testified that the  
12 gun was missing a recoil spring, a guide, and the rear frame  
13 was cracked. The gun will not fire. He had to get a recoil  
14 spring and a guide from another Ruger so that he could fire  
15 the gun. He testified that when it did fire it would double  
16 fire.

17 Mr. Wagster also testified that he did recognize  
18 some of these names and he did recognize in particular that  
19 the gun was sent to the fingerprint lab. Well, there are no  
20 fingerprints of Mr. McCants on that gun. We would have heard  
21 that.

22 Mr. McCants testified -- or excuse me, Sergeant  
23 Landsman testified that you get GPS from cell towers and  
24 accuracy is based on how many phone calls are coming into a  
25 cell tower. If it's busy, it's not accurate. Well, and he

1 testified that T-Mobile does provide documentation as to its  
2 accuracy. Well, we know from T-Mobile that they don't.  
3 Detective Clark testified GPS and cell towers are two totally  
4 separate things. Detective Clark testified Baltimore City  
5 police did not verify the accuracy of the data provided by  
6 T-Mobile. T-Mobile does not verify its accuracy.

7 10:38, the text message was sent by Mr. McCants that  
8 he was at his mother's house three blocks away from where  
9 Mr. Bess was shot. At 10:50, the government gets an e-mail  
10 from T-Mobile showing the phone near where Mr. Bess was shot.  
11 The government says, well, it's within 40 meters, so it has to  
12 be within 40 meters. Well, Mr. Pinchback from T-Mobile  
13 testified about assisted GPS. And he said, well, assisted GPS  
14 is GPS and cell tower combined together that make it accurate.  
15 But it wasn't used in this case.

16 He also testified that they don't verify accuracy in  
17 their data. They admitted that in a city where there are  
18 large buildings the accuracy can be affected. There were also  
19 other e-mails that came in about GPS, 11:51 showed that the  
20 GPS failed, 12:06 a.m. -- at 12:06 a.m. on February 25th  
21 showed that it failed. Another one at 12:21 a.m. showed GPS  
22 failed. There was an e-mail sent at 2:21 a.m., uncertainty is  
23 148 meters. And finally, there's one sent at 2:36 a.m. with  
24 an uncertainty of 1,191 meters, which is three-quarters of a  
25 mile.

1                   There are no witnesses. The CCTV camera shows that  
2 there's a number of people in the area, but Mr. McCants wasn't  
3 on any of those cameras. Not one of those people on the  
4 cameras was identified as Mr. McCants. No witness came  
5 forward to say Mr. McCants was in that area or that he shot  
6 Mr. Bess, including Mr. Bess. Detective Gauze testified that  
7 Mr. Bess told him, I was walking down the street, somebody  
8 asked for a cigarette, I don't know who it was that shot me.

9                   Now, the government tells you that this is an  
10 airtight case, as you can imagine. There's no witnesses,  
11 there's no fingerprints, no DNA of Mr. McCants in connection  
12 with this shooting whatsoever. No gunshot residue test was  
13 performed, the accuracy of the GPS cannot be verified, and the  
14 gun was found four days later in a home. We have different  
15 definitions of airtight.

16                   Now, you've seen the recording in the Chesapeake  
17 Detention Facility. He had no idea he was being recorded. He  
18 knows that Mr. Handy is a member of BGF. Not once did you  
19 hear them talking about BGF. They didn't discuss who owed  
20 money to BGF. They didn't talk about if dues were paid, who  
21 was being disciplined because they broke the rule of BGF.  
22 They didn't talk about the inner workings of the gang, didn't  
23 hear them talking about someone disrespected BGF. Talking  
24 about guns and shooting someone. Don't get me wrong, it was  
25 an awful display. Mr. McCants testified that he made it up

1 and it didn't happen.

2 Well, the government hasn't shown that it did  
3 happen. The government hasn't put on one piece of evidence  
4 that Mr. McCants murdered somebody, that he was shot by  
5 Mr. McCants and then shot by Rondo. There hasn't been one  
6 witness. There hasn't been any guns that have come in.  
7 There's no substantial -- or substantive evidence at all that  
8 this happened. Mr. McCants was afraid, he wanted to seem like  
9 a big man, and that is why he told Handy that he had killed  
10 somebody.

11 Now, he admitted that he made things up. He  
12 admitted that in the phone calls and jail calls. He calls it  
13 "stunting." He owned it. I call it lying. He admitted to  
14 lying on those calls. And he testified in his -- where he's  
15 from everyone does the same thing, they all exaggerate, nobody  
16 tells the truth, everybody is trying to make themselves look  
17 better than the next person that they're talking to, like  
18 saying I have a gun when you don't have a gun, like saying I  
19 have drugs and you don't have drugs, like saying I killed  
20 somebody and you didn't kill someone.

21 Now, the government made a big deal that Mr. McCants  
22 knew about Shawn Gregg's death the day after it happened.  
23 Well, he said a friend had told him that it had happened. In  
24 his neighborhood, I'm surprised he didn't know about it the  
25 same day that it happened.

1                   Colin Knight came to testify for Mr. Jones, and he  
2 testified that he has known Mr. McCants his entire life. And  
3 he lived in Greenmount his entire life. He never saw  
4 Mr. McCants with a gun, never saw him dealing drugs.  
5 Mr. McCants testified about why people in his neighborhood do  
6 not talk to the police. He actually gave a specific instance  
7 where he talked to the police and they took his money. He  
8 talked about how if you're a victim of a crime and you go talk  
9 to the police, they flip the script. And what he's saying is,  
10 if you're a victim, all the sudden, in his neighborhood you  
11 become the defendant. And that's why people don't talk to the  
12 police in his neighborhood.

13                   Now, conspiracy with the possession with intent to  
14 distribute. None of the drugs that were placed in evidence  
15 have any direct connection to Mr. McCants. He admitted he  
16 possessed marijuana at the Baltimore City Detention Center,  
17 but that had nothing to do with BGF. The only references to  
18 drugs are in the phone calls and text messages. And no  
19 evidence that Mr. McCants carried out any of those actions.  
20 No witnesses have testified that Mr. McCants sold them drugs.  
21 No law enforcement has testified that Mr. McCants was caught  
22 selling drugs in the Greenmount area. No search warrants were  
23 ever executed at any homes where he was where drugs were  
24 found. No undercover agents ever purchased drugs from  
25 Mr. McCants. You have testimony from Christopher Meadows that

1 Mr. McCants was selling drugs when he was 12 years old. There  
2 are no drug arrests for Mr. McCants when he was 12 years old.

3 Felon in possession of a firearm. The government  
4 has to prove beyond a reasonable doubt Mr. McCants knowingly  
5 possessed the firearm. The gun was found five days after.  
6 There's no DNA, no fingerprints whatsoever of Mr. McCants on  
7 that gun. Like I said in opening statement two months ago,  
8 not one fingerprint, not one piece of DNA was found on any  
9 evidence brought in here by Mr. McCants.

10 The government brought in five witnesses to say  
11 Mr. McCants is BGF. Every single witness told them that  
12 somebody else told them that. Not one witness said  
13 Mr. McCants told them he was BGF. Not one witness saw him at  
14 a meeting. Not one witness said they heard him say the oath.  
15 Not one witness said they knew who his sponsor was. Not one  
16 person got on the stand and said, I personally know  
17 Mr. McCants is BGF. Not one person said that.

18 And finally, and most importantly, the people that  
19 did say he was BGF, they didn't tell you when, meaning that  
20 they never said Mr. McCants is BGF in 2007, he's BGF in 2008,  
21 '10, '12, '17. The government is trying to jam a round peg  
22 into a square hole. If you know someone or you hang out with  
23 somebody who's BGF, then you're a member.

24 Mr. McCants testified he knew 19 people in this cast  
25 of characters. He testified that he had heard or thought

1 seven of them were BGF. He explained the difference between  
2 knowing someone and hanging out with someone. Knowing someone  
3 is seeing them on the street and saying hi and keep moving.  
4 Hanging out with someone meant you spent time with them, they  
5 were your friends. He admitted some of his friends are BGF.  
6 He admitted some of his friends are Bloods. He admitted some  
7 of his friends are in the Muslim gangs. Does that make him a  
8 member of Bloods, a member of the Muslim gangs? The only  
9 evidence the government has to link Mr. McCants to the BGF are  
10 his tattoos. There has not been credible testimony that links  
11 Mr. McCants to the BGF prior to him turning 18 or after he  
12 turned 18.

13 Now, the government left you with some old sayings,  
14 here's one: A person is innocent until proven guilty. And  
15 the government has not proven that Mr. McCants is guilty  
16 beyond a reasonable doubt of conspiracy racketeering, drug  
17 conspiracy, or possession of a gun by a felon. Thank you.

18 THE COURT: Thank you, Mr. Francomano. Ladies and  
19 gentlemen, we'll take our lunch break. During the lunch break  
20 do not discuss the case with anyone. Do not discuss the case  
21 even among yourselves. Do not allow yourselves to be exposed  
22 to any news articles or reports that touch upon this case or  
23 the issues it presents or any articles or reports that relate  
24 to any of the participants in the case. Avoid all contact  
25 with any of the participants in the trial. Do not make any

independent investigation of the law or the facts in this case. Do not look up anything related to the case or its participants on the internet. Do not consult an encyclopedia or dictionary.

Ladies and gentlemen, to keep things moving we're going to take a 45-minute recess for lunch today, same as yesterday. 45 minutes. Please take the jury out.

(Jury left the courtroom.)

THE COURT: Okay. Let's be ready to go at 20 past 2:00.

(A recess was taken.)

(Jury entered the courtroom.)

THE COURT: Mr. Johnson, that's acceptable to you that Mr. Enzinna is excused this afternoon and that you're accompanied here this afternoon only by Mr. O'Toole?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you. Off the record.

(Jury entered the courtroom.)

THE COURT: Ladies and gentlemen, the closing arguments per se have been completed, but you'll recall that I told you that because the government has the burden of proof, they can elect to make a rebuttal argument after the defendants have argued.

Does the government wish to make a rebuttal argument?

1 MR. MARTINEZ: Yes, Your Honor. Thank you.

2 THE COURT: You may proceed, Mr. Martinez.

3 MR. MARTINEZ: Ladies and gentlemen, good  
4 afternoon.

5 JURORS: Good afternoon.

6 MR. MARTINEZ: For the past couple of hours you've  
7 heard explanations of the evidence in this case that simply  
8 aren't plausible. You've heard attacks on the credibility of  
9 witnesses that are themselves incredible. And you've heard  
10 lots of other arguments that shouldn't distract you from the  
11 overwhelming evidence in this case.

12 But here's the good news: Each and every one of you  
13 has a built-in mechanism that will allow you to keep your  
14 eyes on the ball, to put the arguments you've just heard in  
15 their proper place. You use it every day at home with your  
16 families, at work with your colleagues, in your social  
17 interactions with your friends. It's not a degree or a title  
18 or any kind of specialized training, it's good old fashioned  
19 common sense. So let's use old fashioned common sense to  
20 consider or reject many of the arguments you just heard.

21 When we're done you're going to realize Ms. Hoffman  
22 was right when she told you yesterday that these defendants  
23 are guilty. They're guilty as can be on every single count in  
24 this case. So if we're thinking about common sense, if we  
25 think about this case in terms of common sense, a logical

1 place to start is Count 1.

2 Let's start by clarifying and re-emphasizing exactly  
3 what you're being asked to decide. You heard a lot from  
4 defense counsel about specific murders, shootings, robberies,  
5 and drug dealing. And while counsel all acknowledge that  
6 Count 1 charge is a conspiracy, you may have thought listening  
7 to their arguments that you're being asked to return  
8 individualized verdicts as to those particular crimes.

9 That's not correct. Except for the murder of Moses  
10 Malone, which we'll get to in a moment, you're not being asked  
11 to determine whether these defendants are guilty of any  
12 particular murder or shooting. You're not being asked to  
13 determine whether they're guilty of any particular robbery or  
14 drug dealing. Instead, ladies and gentlemen, when you think  
15 about Count 1, keep in mind that the reason you heard about  
16 all those specific murders and shootings and all those  
17 specific robberies and drug dealing and acts of witness  
18 intimidation was to help you determine the scope of the  
19 defendants' agreement to participate in the charged  
20 racketeering conspiracy.

21 When you think about Count 1, remember what needs to  
22 be proved and what doesn't. Notwithstanding what we just  
23 heard a moment ago, the formula is pretty simple. To prove  
24 these defendants guilty on Count 1, we need to show that the  
25 gang today known as BGF Greenmount Regime, formerly known as

1 YGF, existed. We need to show the gang did the kinds of bad  
2 things, murders, robberies, shootings, drug dealing, witness  
3 tampering, that we've been talking about. We need to show  
4 that these defendants agreed to join and participate in the  
5 gang knowing that they or some other member would commit those  
6 types of crimes.

7 So again, where Count 1 is concerned, it's the  
8 defendants' agreement and the scope of the agreement that  
9 matters. Those are the goal posts, ladies and gentlemen.  
10 Those are the boundary lines on the field. Keep that in mind  
11 as you consider the evidence on Count 1.

12 Now, you've heard a lot from all three counsel about  
13 the credibility of witnesses. The defendants want you to  
14 believe that virtually every government witness, civilians and  
15 cooperators, civilians and law enforcement, took the stand and  
16 lied. But the defendants don't get to make that call. You  
17 get to make that call. It's your job to determine whether the  
18 witnesses in this case were telling the truth.

19 As you make that determination, ladies and  
20 gentlemen, ask yourself this: Did witnesses like Christopher  
21 Meadows and Harry Caesar and Lamontae Smith, did the testimony  
22 make sense? Was it consistent with the testimony of other  
23 witnesses? Was it consistent with the other evidence in this  
24 case? Common sense will tell you that the answer to those  
25 questions is yes. Common sense will tell you that Meadows and

1 Caesar and Smith and all the rest of the government witnesses  
2 came in here and gave accurate testimony about the brutal  
3 realities they observed.

4 Let's start with Christopher Meadows. He told you  
5 that Geezy, Slay, and Digga all were members of YGF. And all  
6 three defendants admitted that. He told you that Geezy, Slay,  
7 and Digga all sold drugs, including large quantities of crack,  
8 in the Greenmount Avenue neighborhood between 2005 and 2007.  
9 On the stand a couple weeks ago, Geezy admitted Meadows was  
10 right, at least in 2007, he was selling crack, marijuana, and  
11 ecstasy every day. That testimony was further corroborated by  
12 what you heard from Detective Ferdinand who purchased crack  
13 cocaine from Geezy in the 2400 block of Brentwood Avenue in  
14 2007. Chris Meadows also told you that Geezy shot at a pair  
15 of drug users outside the 25th Street stash house in 2006.  
16 That was a YGF stash house, remember? Geezy conceded when he  
17 testified that Chris Meadows was right about that too.

18 What about the murder of Gregory Rochester and the  
19 shooting of Antonio Oliver or Bubba? You heard that when  
20 Meadows first told the police about those crimes way back in  
21 2007 he had no idea that the firearms examiner, Sandy Bohlen,  
22 would determine to a reasonable degree of certainty in her  
23 field of expertise that Rochester and Oliver had been shot  
24 with the same gun. There's no getting around it, ladies and  
25 gentlemen, that's a powerful piece of evidence that strongly

1 corroborates Christopher Meadows's testimony.

2 Now, counsel, Mr. Enzinna and Mr. Bussard, this  
3 morning emphasized that Chris Meadows didn't tell Detective  
4 Lloyd that Geezy had green-lighted Gregory Rochester or that  
5 Donatello Fenner was there when Rochester was murdered until a  
6 second interview with the police in 2008. But remember,  
7 Meadows wasn't asked who green-lighted the murder until that  
8 second interview. When he was asked who green-lighted the  
9 murder, he told the police what he knew, just like he did with  
10 you on the witness stand. And keep in mind, ladies and  
11 gentlemen, Geezy is not the person who should be throwing  
12 stones at Christopher Meadows for providing inconsistent  
13 statements. On this topic, on the murder of Gregory  
14 Rochester, Geezy lives in a glass house.

15 Remember that in January 2007, and this came out  
16 during Geezy's cross-examination a couple weeks ago, Geezy  
17 talked to the police about what he was doing on the night  
18 Rochester was killed and he told them he was watching a movie.  
19 Then when he testified in state court in 2015, he told a jury  
20 just like you that he was asleep. Then you heard testimony  
21 from Geezy's ex-girlfriend, Tyra Woodley, who told you on the  
22 night of the murder she was playing with Geezy's hair. You  
23 also heard from Christopher Meadows in this case that Geezy  
24 told Meadows he was using the bathroom when the murder took  
25 place. Those are four different versions, ladies and

gentlemen. That's what we call a version control problem.

Geezy has that problem, not Christopher Meadows.

Like Ms. Hoffman told you yesterday, as Detective Lloyd told you on the witness stand way back in November, Christopher Meadows's account of the Gregory Rochester murder has been consistent from day one. He's also been corroborated by physical evidence and admissions by these defendants.

How about Harry Caesar? Caesar told you in detail about the green-lighting of Moses Malone and also about the murder itself. He told you about discovering the search warrant affidavit that revealed Malone as a witness in his house. He told you he was there when Elliott Reed took the affidavit to Geezy. Told you he was there when Geezy pressured Malone's girlfriend, a woman named Oct, to tell BGF where Malone was. He told you that he heard from Geezy's own mouth, if anyone spots Moses Malone, there's a green light.

Ladies and Gentlemen, Harry Caesar didn't just tell you those things. He also told Detective Taylor. And he told her in 2013 in real-time as the events were taking place.

Detective Taylor confirmed those conversations when she testified. And we know from Caesar's -- well, and her account was consistent with Harry Caesar's. And we know from Caesar's phone records, which remember, Harry Caesar has never seen, conversations between Caesar and Taylor did in fact take place.

1                   Caesar also told you that Wesley Brown claimed  
2 responsibility for murdering Moses Malone. That testimony was  
3 also corroborated. In fact, it was corroborated by two  
4 members of the Greenmount Regime. You heard the conversation  
5 between Digga and Norman Handy in the Chesapeake Detention  
6 Facility in September 2017. During that conversation when  
7 they thought that no one else was listening, Digga and Handy  
8 confirmed that Wes Brown had killed Malone to keep him from  
9 testifying against Handy. They confirmed that Nod or James  
10 Cornish had testified in state court that Wes had done it.  
11 Then they confirmed that Wes had sent the text messages in  
12 which he made arrangements to get rid of the .22 caliber gun  
13 that he used to murder Malone. You know those text messages  
14 exist. You saw them yourselves in Wes Brown's phone records.

15                   By the way, ladies and gentlemen, with respect to  
16 Digga and the September 2017 conversation about Moses Malone,  
17 don't believe for a second that he learned about that murder  
18 from the government at a reverse proffer. That never  
19 happened. You heard testimony from two law enforcement  
20 officers yesterday who were there at the reverse proffer, both  
21 told you that no one said a word about Moses Malone or about  
22 his murder during that meeting. Both told you that no one  
23 recited the BGF oath for Mr. McCants. Both agents told you  
24 that no one threatened to put Mr. McCants away for the rest of  
25 his life unless he cooperated. Any suggestion otherwise is a

1 fiction. And you shouldn't hesitate to reject it.

2 Back to Harry Caesar. Caesar testified that while  
3 he was locked up with Slay at MRDCC Slay admitted that he  
4 murdered Trevon White or Country in May of 2013. Harry  
5 Caesar's not the only person who told you that Slay killed  
6 Country. According to Lamontae Smith or Chop, it was  
7 basically common knowledge among the gang's younger members  
8 that Slay was responsible for murdering their friend. That  
9 was the upshot of the jail call that you heard between Norman  
10 Handy and Montel Harvey in June of 2013, which Harvey made  
11 clear he didn't mess with Slay or his friends anymore because  
12 of what happened with Country.

13 So given all that, don't let anyone try to persuade  
14 you that Harry Caesar was making things up. His testimony was  
15 corroborated by Detective Taylor and other witnesses,  
16 including members of the gang. It was further corroborated by  
17 cell phone records, cell site location data, social media  
18 posts, and all the other information that Ms. Hoffman  
19 mentioned yesterday. That corroboration isn't an accident.  
20 It's not a lucky coincidence. It shows you that Harry  
21 Caesar's testimony, just like Christopher Meadows's, was  
22 accurate and squarely on point.

23 That brings us to Chop or Lamontae Smith. Chop told  
24 you that all three of these defendants were members of the  
25 Greenmount Regime and you heard the same thing from multiple

1 other witnesses in this case. Chop also told you that after  
2 Slay killed Country in May of 2013 he and other members of the  
3 gang retaliated against Slay and Ben Miller for their role in  
4 Country's death. Again, ladies and gentlemen, that testimony  
5 is also corroborated. It's corroborated by the jail call  
6 between Norman Handy and Montel Harvey, in which Harvey told  
7 Handy, excuse my French, that "motherfuckin' Ben got his  
8 motherfuckin' issue" the previous night. It's further  
9 corroborated by a second jail call in which Harvey told Handy  
10 that he had gone to look for Slay with the gun.

11 While we're talking about Chop, Slay, and Ben, we  
12 need to correct the record on an important point. During his  
13 argument, Mr. Enzinna told you this morning that Chop had  
14 changed his testimony as to who killed Country. Mr. Enzinna  
15 suggested that Chop had told the grand jury that Ben had  
16 killed Country, but then he changed his testimony and told you  
17 Slay had done this. I think we did this before when Chop was  
18 on the witness stand during cross-examination you may remember  
19 we put a transcript on the screen.

20 But just to refresh your memory, Chop was asked in  
21 the grand jury: "Do you recall ever learning Ben played a  
22 role providing Slay the weapon that was used to kill Country?"

23 Answer: "Yeah."

24 Question: "What did you hear about that?"

25 "They said Ben gave Slay the gun to kill Country and

1 then after he killed Country he," that is Slay, "gave Ben the  
2 gun."

3                   Ladies and gentlemen, Chop told you the same thing  
4 on the witness stand in this case, so don't believe for a  
5 second that he came in here and changed his testimony.

6                   How about the murder of Thabiti Wheeler? Chop  
7 testified that while he was sharing a cell with Roscoe, Roscoe  
8 told him Slay killed a hack driver, who you now know as  
9 Wheeler. Roscoe told Chop that Slay was in the back seat and  
10 that the victim, Wheeler, was in the front. As Ms. Hoffman  
11 told you yesterday, that testimony is also corroborated.  
12 Remember Detective Kazmarek, he testified that based on the  
13 location of Wheeler's gunshot wounds, where the exit and entry  
14 wounds were, he was able to determine that Wheeler had been  
15 shot from behind. And you heard from the firearms examiner,  
16 again, Sandy Bohlen, who told you that to a reasonable degree  
17 of certainty in her field of expertise, Country and Thabiti  
18 Wheeler had been killed with the same gun. That is entirely  
19 consistent with Chop's testimony that Slay was responsible for  
20 both murders.

21                   Chop also told you, just as he told Detectives Veney  
22 and Landsman in October of 2013, that Slay was the person that  
23 shot him on October 5th of 2013. Now, you heard a lot about  
24 how Chop didn't tell the police that Slay had shot him for a  
25 couple of weeks. You heard that days after the shooting Chop

1 refused to say who did it, then he said the shooter was 5'7"  
2 with hair, and that wasn't correct either. Chop explained on  
3 the stand why he did that. And his explanation makes sense.  
4 He wanted to get the police off his back and he knew that  
5 under the rules of BGF "you ain't supposed to tell." Those  
6 were his words. You ain't supposed to tell because if you do  
7 tell you wind up dead like Moses Malone.

8 Here again, ladies and gentlemen, we're not simply  
9 asking you to take Chop at his word. There's other evidence  
10 supporting his testimony that Slay is the person who shot him.  
11 You heard the jail calls in which Slay told other people,  
12 including the guy Lavon Cypress, Swan, to get rid of a whip or  
13 a car or a watch. You saw where those calls led. They didn't  
14 lead to the blue Honda that you heard so much about, nor did  
15 they lead to a watch. It led to a .45 caliber gun. James  
16 Wagster told you that to a reasonable degree in his field of  
17 expertise that was the gun that had been used to shoot Chop.  
18 How could that have happened if Chop wasn't telling the truth?

19 So we've just reviewed the testimony of three key  
20 witnesses in this case. We should emphasize again that none  
21 of these witnesses were testifying pursuant to plea agreements  
22 or in the hope of reducing their sentences in the future. In  
23 fact, Harry Caesar and Christopher Meadows walked in here off  
24 the street. These were not witnesses who came here to sing  
25 for their supper. These were witnesses with little to gain

1 and everything to lose. Under the rules of BGF, ladies and  
2 gentlemen, those witnesses signed their own death warrants  
3 when they took the stand in this case, yet they still told  
4 you, without flinching, who these defendants were and what  
5 they did.

6 You've heard attacks on other government witnesses  
7 too, but none of those attacks are legitimate. You've heard,  
8 for example, that Mike Gray is a liar. Mike Gray's testimony  
9 regarding the history of BGF and the merger between BGF and  
10 YGF is entirely consistent with the testimony of other  
11 witnesses, including Brian Rainey. Gray and Rainey both told  
12 you that around 2007 senior BGF members wanted to shut YGF  
13 down because they thought YGF was out of control. Now that  
14 you've seen the evidence, now that you've heard about the  
15 murders and shootings and robberies, you know that YGF was in  
16 fact out of control. You know that YGF was, as Geezy called  
17 it, "the murder team."

18 The same way Gray and Rainey both told you when BGF  
19 issued its ultimatum to YGF, told them to either shut down or  
20 cross over and follow BGF's rules, they issued the ultimatum  
21 to Geezy. They issued the ultimatum to Geezy because he was  
22 the one in charge. That is consistent with all the other  
23 evidence you've heard in this case.

24 While we're talking about Mike Gray, you may  
25 remember that he also testified about the meeting at Artez

1 Harris's mom's house in late 2012 or early 2013. This was the  
2 meeting where Geezy personally volunteered to get rid of Porky  
3 or Joseph Davis. And you heard about the beef between Porky  
4 and Geezy from other witnesses, including Porky himself as  
5 well as Michael Gwaltney. Ladies and gentlemen, the testimony  
6 by Porky and Gwaltney was like seeing two different sides of  
7 the same coin. Porky told you about the plot to rob him and  
8 kill him from one side, Gwaltney told you about it from the  
9 other. Both witnesses told you that Geezy was trying to help  
10 kill -- rather -- yeah, Geezy was trying to help kill Porky on  
11 the night when Geezy got shot. It's not an accident or  
12 coincidence, ladies and gentlemen, that the testimony by Porky  
13 and Gwaltney was consistent. Not an accident or coincidence  
14 that the testimony of those witnesses makes sense.

15 And while we're talking about this, this is probably  
16 a good time to mention that when you go back to fill out the  
17 verdict forms, you'll get verdict forms for each defendant, as  
18 to Count 1, the RICO conspiracy, if you find them guilty on  
19 Count 1, you'll then be asked to complete a box that has  
20 different types of predicate crimes that you can find were  
21 foreseeable to these defendants. Those will be the ones  
22 you've heard about, murder and attempted murder and all its  
23 lesser included offenses, robbery, drug-related offenses,  
24 witness tampering, and witness intimidation.

25 When you're talking about murders, murders include

1 not only the ones Mr. Enzinna mentioned during his closing  
2 this morning, he talked about three: Rochester, Malone, and  
3 Henry Mills. They also include episodes like the ones we just  
4 talked about with Porky. When Geezy went to the meeting with  
5 Mike Gray and Artez Harris and Stimey and Ricky Evans, three  
6 other BGF bushmen, and they talked about getting rid of Porky,  
7 that is a conspiracy to commit a murder that is foreseeable to  
8 Geezy. That goes to show that an act of murder was  
9 foreseeable to him in furtherance of the racketeering  
10 conspiracy. Same goes with respect to the plot to lure Porky  
11 out of the apartment building. Same victim different murder  
12 plot. Those are all murders that you can find were  
13 foreseeable to that defendant.

14 How about Troy Kellam? Kellam testified that he  
15 talked to David Hunter in jail about Hunter's murder of Nique  
16 or Henry Mills. Told you that Hunter confessed to the murder  
17 and that Hunter was worried about a video tape in which he was  
18 depicted running away. Kellam testified that according to  
19 Hunter the order to kill Nique had come through the pipeline,  
20 it had come through the BGF chain of command, that Hunter was  
21 trying to get Geezy or "Big Bro" to get someone else to take  
22 the charge.

23 Now, Kellam told you that he had never seen the  
24 video that David Hunter was worried about, but you've seen it  
25 during this trial. And just like David Hunter told Troy

1 Kellam, it did show the shooter of Henry Mills running down  
2 Greenmount Avenue seconds after the murder took place. You  
3 then saw a second video captured later on the day of the  
4 murder in which Hunter was wearing the same clothes he had  
5 been wearing when he murdered Henry Mills. You saw in the  
6 video Geezy reenacted the shooting, remember the (indicating),  
7 and that looked an awful lot like the shooting of Henry Mills.  
8 Those videos prove not only that David Hunter killed Henry  
9 Mills and that murder was foreseeable to Geezy, but also that  
10 Troy Kellam gave accurate testimony in this case.

11 Now, you also heard a lot about the testimony of  
12 these defendants. And all three testified. But when you  
13 think about what the defendants actually said and all the  
14 evidence contradicting what they said, it should be obvious  
15 the defendant's testimony only made the case against them even  
16 stronger. Remember the defendants want you to believe that  
17 all of the government's witnesses are lying. On the facts of  
18 this case, ladies and gentlemen, that dog simply won't hunt.

19 You've heard from over ten cooperators in this case.  
20 Many of those witnesses have known these defendants for years.  
21 Many of them don't know and haven't spoken with one another,  
22 yet they all gave specific details about who these defendants  
23 were and what they did. Again, many of the witnesses  
24 corroborated one another, were further corroborated by  
25 physical evidence and these defendants' own admissions.

1                   Back to the defendants' testimony. To credit their  
2 testimony, you'd have to believe a long list of self-serving  
3 explanations that simply aren't consistent with old fashioned  
4 common sense. You'd have to believe that Geezy's Jamaa tattoo  
5 was not a BGF tattoo, but instead was a reference to a  
6 nonexistent record company called Jamaaville. You'd have to  
7 believe that the silver back gorilla shirts that Geezy,  
8 Stimey, Sharieff Dupree were all wearing in the social media  
9 pictures, you saw in one of them Geezy was also making the X,  
10 weren't BGF, but instead depicted scenes from *Planet of the*  
11 *Apes*. So Stimey and Reef were wearing *Planet of the Apes*  
12 t-shirts that just happened to have George Lester Jackson on  
13 the front.

14                   You'd have to believe that when Geezy said, "free  
15 Roscoe, free Dave, n-word, my shooter," wasn't saying  
16 "shooter," but he was instead referring to a singer named  
17 Shoody on Duty. Come on. You'd have to believe that when  
18 Geezy pantomimed the shooting in Mund Park on the day Henry  
19 Mills was murdered in the presence of David Hunter that he was  
20 reenacting a different shooting instead of the murder of Henry  
21 Mills.

22                   You'd have to believe that Slay wasn't on the steps  
23 of 214 East 22nd Street on the night Country was killed, when  
24 in fact he left his fingerprints on two different bottles at  
25 the scene. Now, Mr. Bussard emphasized that one of those

1 fingerprints was found in the gutter, but what he didn't tell  
2 you was that one was found on the steps literally next to the  
3 blood trail that was left after Country was killed.

4 In fact, when you go back to deliberate, if you look  
5 at Government's PHCS 5-7, you'll see that that Seagram's  
6 Escapes bottle that had Slay's fingerprint on it was found  
7 next to another bottle which was laying sideways and had  
8 splattered blood on the bottom of its label.

9 In order to believe these defendants, ladies and  
10 gentlemen, you'd have to believe that the 276 tattoo means  
11 Barclay and Guilford instead of BGF. You'd have to believe  
12 that Digga was just "blowing smoke," as he put it, when he  
13 told his friends repeatedly that he was willing to sell them  
14 drugs or that he was carrying a gun.

15 You'd have to believe that Digga just happened to be  
16 in Cecil County shooting a game of dice when Corporal Finch  
17 chased him and found him hiding in the bushes after a home  
18 invasion robbery in 2010. You'd have to believe that when  
19 Digga told Norman Handy that he had shot someone 11 times and  
20 taken the victim's cell phone while the victim was still  
21 twitching he was just talking to sound tough in the jail. And  
22 you heard Digga himself tell his girlfriend on the jail call  
23 that no one's going to buy that. Ladies and gentlemen, you  
24 shouldn't buy that.

25 Those are just examples, ladies and gentlemen, to

1 consider those examples, keep in mind that in addition to  
2 saying things that simply can't be squared with common sense,  
3 the defendants damaged their credibility in other ways. You  
4 heard that Geezy testified untruthfully before a state jury  
5 when he said that he hadn't sold drugs following his arrest in  
6 2007. You heard that when Slay was questioned about the jail  
7 call which he said that Swan was trying to sell a blue Honda,  
8 not a gun. He threw his hands up and said, "I'm not a good  
9 explainer." That, as it happens, ladies and gentlemen, was  
10 the most accurate piece of testimony he gave.

11 You learned just yesterday that Digga wasn't  
12 truthful when he said he didn't drive a car, that he didn't  
13 call his brother Tradon, that he didn't sell drugs. In fact,  
14 you heard him say on the jail call that we played yesterday  
15 that Tradon, who he called Tradon and not Dog Ass or Don, had  
16 gotten smacks from his hitter. You also learned yesterday  
17 that when Digga told you that he was on his phone at  
18 10:50 p.m. on February 4th, 2017, the time Gregory Bess was  
19 shot, he had previously asked Ricky Evans or Dorsey whether  
20 his dad would come to court to say that Digga's phone was  
21 charging in his house. Apparently between November 28th,  
22 2017, the second day of the government's case in chief, and  
23 the day he took the stand in this case, Mr. McCants decided to  
24 ditch the Dorsey's dad phone charging story and trade in for a  
25 better one saying he was on his phone.

1                   You heard him on the jail calls with his girlfriend  
2 saying that he had to figure out how to talk around things  
3 when he got on the witness stand. That was exactly what he  
4 was doing when he went to Dorsey's cell in CDF and said, hey,  
5 can pops come testify?

6                   You also heard that when Digga was questioned about  
7 all the different conversations which he admitted having drugs  
8 or selling a gun -- selling drugs or having a gun, rather, or  
9 having warrants or having a baby on the way, he told  
10 Ms. Hoffman, you want the jury to believe that just because I  
11 was lying then when no one was listening and nothing was at  
12 stake, he was also lying to you when you were listening and  
13 everything was at stake. That, ladies and gentlemen, is up to  
14 you to decide. It's up to you to decide whether that shoe  
15 fits.

16                   So when you weigh the defendants' testimony against  
17 the testimony of other witnesses and against all the other  
18 evidence in this case, ask yourselves whether you're  
19 comfortable believing anything that came out of their mouths.  
20 Ask yourselves whether any of their testimony is credible.  
21 Old fashioned common sense should tell you the answer to those  
22 questions is no.

23                   Let's talk about membership in the racketeering  
24 enterprise, the BGF Greenmount Regime, formerly known as YGF.  
25 It's amazing that despite all the evidence you've seen and

1 heard these defendants still deny being members of the gang.  
2 Don't believe that for a second. You've heard from a parade  
3 of witnesses who put these defendants in the gang. Meadows,  
4 Caesar, Lamontae Smith all put Slay in the gang. Gray,  
5 Meadows, Kellam, and Smith all put Digga in the gang. And  
6 Gray, Rainey, Meadows, Kellam, Davis, Gwaltney, Caesar, Smith,  
7 Kennethfer Stokes, and Moses Malone all put Geezy in the gang.  
8 That is an awful lot of witnesses.

9 It's not just the witnesses either. Defendants have  
10 all poo-pooed the tattoos, which Ms. Hoffman summarized  
11 extensively for you yesterday. Those tattoos are real life  
12 advertisements of the defendants' membership in BGF. The  
13 defendants wore those advertisements proudly, at least until  
14 they took the witness stand in this case.

15 You also saw the letter from Roscoe to Digga, which  
16 began with the salutation Eusi Guyedi Jamaa or Black Guerilla  
17 Family. Even Slay acknowledged when he testified that Eusi  
18 Guyedi Jamaa really means BGF. You've seen the postings on  
19 social media about J and Jamaa and gorillas. You've seen the  
20 silver back gorilla shirts that we talked about. You've seen  
21 the text messages in which Digga talked about "J shit" as well  
22 as the bug recording which he conceded that Chop would confirm  
23 that he was in the gang. That's exactly what Chop did.

24 While we're talking about Digga, let's set a couple  
25 things straight. You heard about witnesses like Gray, Kellam,

1 and Smith who met with investigators a few times before they  
2 put Digga in the gang. In fact, with respect to Gray and  
3 Kellam, you were told they testified in a different federal  
4 trial and that they didn't mention Digga during that  
5 testimony. Digga wasn't on trial in that case. It was other  
6 BGF members from other parts of the city.

7 As you heard at trial, ladies and gentlemen, when  
8 investigators asked those witnesses about Digga, they told the  
9 government what they knew. You also heard that none of the  
10 witnesses I just mentioned had a conversation with Digga in  
11 which Digga put himself in the gang. But guess who did hear a  
12 conversation like that? You, the jury. We already mentioned  
13 the September 25th, 2017 CDF bug recording. It's the same  
14 conversation where Digga and Norman were talking about who was  
15 going to come testify and they talked about, we know Nod's  
16 going to come testify, he put everybody in the gang. And  
17 Digga said Chop's going to confirm that shit, his rat ass, yo,  
18 he going to confirm that shit.

19 You may remember that later -- there's a later  
20 excerpt of that same recording, 41 minutes and 41 seconds to  
21 47 minutes, where Digga and Norman have a long conversation  
22 where Norman was talking about how Robbo was the LTC and yo  
23 was the C. They were talking about comrades surrounding an  
24 n-word. And Norman said he ain't do right for J. At one  
25 point McCants says, but he was the C, though; right? And you

1 may remember that this morning toward the end of his closing  
2 argument, Mr. Francomano told you that you didn't hear any  
3 recorded conversations where Digga was talking to anybody  
4 about green lights, did you? Well, in this conversation  
5 Norman says somebody was geeking and ready to put a green  
6 light on somebody. So ladies and gentlemen, what you heard  
7 before lunch was just wrong. You can say something with all  
8 the conviction in the world, that doesn't make it right.

9 Speaking of recorded conversations where Digga  
10 talked about BGF, another call Mr. Francomano forgot to  
11 mention to you was the jail call with Shelton Burris, or at  
12 least the part of it where they talked about being brought up  
13 top and how BMs didn't like Shelton Burris. Remember Burris  
14 also referred to himself as the MOD. You know from Mike Gray  
15 and other BGF witnesses that that's a position in the BGF  
16 bubble, minister of defense. In that conversation, Burris  
17 told him he wanted to put in work and retaliate against Chop  
18 because Chop had testified against Slay. Ladies and  
19 gentlemen, Chop is the same witness who Digga called a rat in  
20 another recorded conversation with Norman Handy about a year  
21 later.

22 Then there's the letter from Digga to Keyshay. Make  
23 no mistake about it, ladies and gentlemen, Digga wrote that  
24 letter. You saw his name on the return address, you saw his  
25 inmate ID number, you saw the side-by-side comparison of the

1 envelope in which the letter was sent with the mail that was  
2 recovered from Pioneer Drive. Remember Ms. Hoffman had them  
3 both up on the screen. You also saw that in that letter Digga  
4 talked about being J and getting into an altercation with a  
5 Blood. Here again, he's putting himself in the gang. So put  
6 aside Mike Gray and Troy Kellam and Lamontae Smith, all of  
7 whom we've explained are credible. You don't need them, Digga  
8 puts himself in the gang and he does it over and over.

9 By the way, another way you know Digga wrote that  
10 letter is he talks about his brother, Tradon. Of course he  
11 tried to distance himself from that letter by saying that he  
12 doesn't call Tradon, Tradon, he only calls him Dog Ass or Don.  
13 You know from the jail call you heard yesterday that's not  
14 true.

15 Talk a little bit about YGF. You've heard arguments  
16 that YGF shouldn't be considered as part of the racketeering  
17 enterprise in this case. You've heard that YGF was basically  
18 a neighborhood club, no goals, no structure. That's not  
19 consistent with the evidence. The evidence shows that YGF did  
20 have goals and structure. YGF dealt drugs, crack, heroin,  
21 marijuana, ecstasy, on a daily basis. You saw where YGF  
22 members sold those drugs. You heard about the specific  
23 locations or stash houses where they stored and packaged the  
24 drugs. You heard who supplied the drugs, Geezy was the crack  
25 connect and Fats was the heroin connect. And who sold the

1                   drugs on the street? Slay, Digga, Dave, Roscoe, Joe, Foo, and  
2                   Don. Sure, ladies and gentlemen, you saw evidence of a  
3                   organized and structured drug operation.

4                   How about the murder -- well, before we go to the  
5                   murder of Rochester, I want to circle back to the shooting of  
6                   the drug users. Remember that occurred outside a YGF stash  
7                   house. And it occurred because Geezy thought those drug users  
8                   had stolen drugs from the gang, from his drug organization.

9                   Now let's talk about the murder of Rochester. You  
10                  heard that YGF had multiple meetings where members of the gang  
11                  planned that murder. You heard the murder was authorized by  
12                  Geezy and carried out by Slay and Foo. That in and of itself,  
13                  ladies and gentlemen, is evidence that YGF did have structure  
14                  in the chain of command. It was an order being passed down by  
15                  Geezy. The chain of command began with Geezy. That's  
16                  consistent, that stayed the same, ladies and gentlemen, for  
17                  all intents and purposes throughout the conspiracy in this  
18                  case.

19                  YGF also had a defined territory, 2200 to 2400  
20                  blocks of Guilford Avenue, Barclay Street, and Greenmount  
21                  Avenue. Those city blocks remained the core of the gang's  
22                  territory after it merged into BGF and became the Greenmount  
23                  Regime the 2007. YGF had a defined membership: Geezy, Slay  
24                  Digga, Roscoe, Joe, Dave, and others. All those members  
25                  remained in the gang and continued to participate in the gang

1 after it transitioned into BGF.

2 So like Ms. Hoffman told you yesterday, the evidence  
3 demonstrates that throughout the charged conspiracy, YGF and  
4 BGF, specifically the BGF Greenmount Regime, were the same  
5 gang, operating in the same neighborhood, committing the same  
6 crimes with the same core members, plus some new younger  
7 members as time went by. And throughout it all, ladies and  
8 gentlemen, one guy, Geezy, was the man in charge.

9 So there should be no reasonable doubt of the charge  
10 of racketeering conspiracy in this case does include YGF. And  
11 remember, there's a reason why all three defense counsel were  
12 trying to carve YGF off in this case. It's because all of  
13 their clients admitted on the stand that they were members of  
14 that gang. Before we leave with YGF, I just want to correct  
15 the record as to one thing that came up in the arguments you  
16 heard before lunch. Mr. Francomano told you that Mr. McCants  
17 was, I believe he said 12 years old at the time of the e-pill  
18 robbery that Christopher Meadows testified about. Mr. Meadows  
19 testified that the robbery happened in 2007, which means  
20 Mr. McCants would have been 14 or 15. Those facts are  
21 important to get right.

22 Now let's talk about the murder of Moses Malone. By  
23 now there's no question Moses Malone was murdered, that he was  
24 murdered because he was a witness against Norman Handy, and  
25 that Wesley Brown pulled the trigger. There should also be no

1 question that Geezy green-lighted that murder. We've already  
2 talked about Harry Caesar's testimony, we've talked about all  
3 the different ways in which he's corroborated. I won't repeat  
4 all that here.

5 Notwithstanding all that, Geezy wants you to believe  
6 he had nothing to do with the murder, that he didn't even know  
7 Moses Malone, and that Harry Caesar shouldn't be trusted.

8 During his argument Mr. Enzinna attempted to discredit Harry  
9 Caesar by pointing out that when he called Detective Taylor to  
10 tell her that Malone was about to be killed and the murder was  
11 about to get down, he said something to the effect of "Geezy  
12 and them are coming to get your boy." According to  
13 Mr. Enzinna, that story doesn't make sense because Caesar  
14 wasn't with Geezy on the night of the murder because Wesley  
15 Brown is the person who killed Country -- or Malone rather.

16 Ladies and gentlemen, that argument misses the  
17 point. What Caesar told Detective Taylor in the heat of the  
18 moment, that Geezy and them were coming to get Malone, he was  
19 just reaffirming that Geezy was the one behind the plot.

20 Ladies and gentlemen, Harry Caesar knew that because Harry  
21 Caesar was there when Tech brought Geezy the search warrant  
22 that outed Moses Malone as a witness. He was there when Geezy  
23 pressured Oct to tell BGF where Malone was. He was there when  
24 he said if anyone spots Moses, there's a green light.

25 So given all that it makes sense that Harry Caesar

1 told Detective Taylor that Geezy and them were coming to get  
2 Malone. It makes sense because Caesar understood correctly  
3 that Geezy was responsible for what was about to happen.

4 What about the fact that Caesar didn't see Geezy on  
5 the night of the murder? Caesar told you candidly that he  
6 never made it to Cokesbury Avenue on the night Malone was  
7 killed. But that's where Geezy was. Geezy admitted on  
8 cross-examination that he was right there at Lock Raven and  
9 Cokesbury when Moses Malone was killed. That's why Harry  
10 Caesar never saw Geezy. He never saw Geezy because Geezy was  
11 at the scene of the crime watching Wesley Brown do his dirty  
12 work.

13 Mr. Enzinna also tried to claim that Geezy couldn't  
14 have green-lighted Moses Malone because a green light wasn't  
15 necessary for the murder of a non BGF member. Well, first of  
16 all, that's not exactly what Harry Caesar said. While  
17 cross-examining Caesar, Mr. Enzinna mentioned there's a BGF  
18 rule that says members aren't supposed to take matters into  
19 their own hands with respect to another brother. He asked  
20 Caesar something like, does that rule apply to non BGF  
21 members? Caesar answered well, if non BGF members, if the C  
22 gives an order and he sees something in black and white, he's  
23 allowed to go ahead and make whatever order it is.

24 Ladies and gentlemen, that is exactly what happened  
25 when Geezy ordered the murder of Moses Malone. In any event,

1 even if a green light wasn't required for the murder of a non  
2 BGF member, that certainly doesn't mean that a ranking member  
3 of the gang couldn't tell a subordinate member of the gang to  
4 kill a witness. Whether it was required or not, Geezy still  
5 gave that order to Wesley Brown and that's why he's guilty on  
6 Counts 3 and 4.

7 Before we leave the murder of Malone, Mr. Francomano  
8 argued that McCants was locked up at the time Malone was  
9 murdered and therefore had nothing to do with Moses Malone's  
10 murder. But that doesn't understand how RICO works. Remember  
11 when we talked about in the very beginning of this, we said  
12 we're going to take this in terms of common sense and we're  
13 going to start by telling you where the goal posts are.

14 We talked about the things you have the find to find  
15 these defendants guilty of Count 1. Did the gang exist? Were  
16 the defendants in it? And did they join and participate  
17 knowing that it did the kind of bad things that we've been  
18 talking about?

19 So with respect to the murder of Moses Malone,  
20 Digga's conversation with Norman Handy in the jail on  
21 September 25th, 2017 where they discussed the insider details,  
22 the fact that Wes had done it, what became of the murder  
23 weapon, who might be telling, in connection with this case,  
24 that makes -- that's an act of murder. It's foreseeable to  
25 Marquise McCants, in furtherance of this conspiracy, as a

1 member of BGF. It's a type of crime that was foreseeable to  
2 him as a result of his participation in a gang.

3 The defendants want you to believe that several of  
4 the crimes you've heard about have nothing to do with the  
5 charged conspiracy. For example, you've heard arguments of  
6 Digga's shooting of Gregory Bess or his drug activity in the  
7 jail or his robbery in Cecil County had nothing to do with  
8 BGF.

9 You've also heard argument that Geezy's drug dealing  
10 over a period of years were somehow not connected to the gang.  
11 Ladies and gentlemen, you should reject those arguments. For  
12 starters, the law doesn't just require that every time a gang  
13 member commits a crime he has to be caught on camera pounding  
14 his chest and saying this one's for BGF before you can find he  
15 acted in furtherance of the gang. Instead, ladies and  
16 gentlemen, all you need to find is that the crimes the  
17 defendants are committed -- the crimes they committed here are  
18 consistent in terms of location, participants, or modus  
19 operandi, the broader pattern of racketeering activity in  
20 which the gang engaged, and that's true of all the crimes  
21 you've heard about in this case.

22 With respect to Digga's shooting of Gregory Bess,  
23 the evidence shows that he committed that shooting near the  
24 intersection of Greenmount and Brentwood squarely within the  
25 territory, right in the middle of the territory controlled by

1 the BGF Greenmount Regime. Committed that shooting while  
2 ducking an arrest warrant issued in connection with this case.  
3 He then attempted to hide the gun that he used to commit the  
4 shooting and later to get rid of the gun with the help of  
5 associates who were helping him flee from the charges in this  
6 case.

7 You heard them on the wire call after Digga came out  
8 of the house on the morning of February 5th, 2017. I know he  
9 told you he only thought he had a state warrant on the  
10 violation of probation. But you heard his friends saying, oh,  
11 was his phone tapped? And Deandre Dorsey pipes up, did he  
12 have a reward, did he have a reward? Ladies and gentlemen, no  
13 one has a reward on a state violation of probation. Digga and  
14 his friends all knew that at the time Gregory Bess was shot,  
15 he was fleeing the charges in this case. All of that  
16 establishes, ladies and gentlemen, that the shooting of  
17 Gregory Bess and all the conduct relating to that shooting was  
18 committed in furtherance of the racketeering conspiracy  
19 charged in Count 1.

20 Now would be a good time to correct another thing  
21 that came up during Mr. Francomano's closing argument.  
22 Mr. Francomano mentioned that when Digga testified he gave  
23 alternate explanations, alternative facts, if you will, of  
24 things that happened in this case that haven't been  
25 contradicted. One of those alternate explanations was what he

1 told you about being on his phone at the time Gregory Bess was  
2 shot. Well, you already know that's contradicted because  
3 Digga was fishing around for another story when this trial  
4 started when he went to Ricky Evans and asked his dad to come  
5 testify that his phone was charging in his house.

6 Digga also contradicted himself on his explanation  
7 of what he was talking about with Norman Handy on the CDF bug  
8 when he talked about the murder where he shot the guy 11  
9 times. Contradicted himself when you heard him say in a jail  
10 call that no one was going to buy his explanation.

11 Go back to the connection between the crimes you  
12 heard about and the conspiracy charged in Count 1. I want to  
13 talk about the robbery in Cecil County in 2010. Now, you  
14 heard from Christopher Meadows, Lamontae Smith, Mike Gwaltney,  
15 and Troy Kellam that BGF members committed robberies all the  
16 time. But importantly, you also heard that they sometimes  
17 committed robberies or hit licks outside their neighborhoods  
18 where they wouldn't be known or recognized by their victims.  
19 That's what Christopher Meadows did in Dutch Village in West  
20 Baltimore in 2006 and 2007. That's what Mike Gwaltney did  
21 when he robbed Porky in the apartment building on North Avenue  
22 in 2012. That's what Digga did when he committed the home  
23 invasion robbery in Cecil County in 2010. He went outside his  
24 neighborhood and hit a lick, which is entirely consistent with  
25 a pattern of racketeering activity that you've heard about in

1 this case.

2                   While we're talking about Cecil County, let's  
3 correct another point about Corporal Finch's testimony.  
4 Mr. Francomano said that Corporal Finch said that Mr. McCants  
5 said he didn't commit a crime. On direct examination,  
6 Corporal Finch said when he interviewed Digga he didn't say  
7 much, but what he said was no one else was involved.

8                   You also heard -- let's talk about the weed in the  
9 jail. You heard that BGF was originally a prison gang, that  
10 one of its original purposes was smuggling drugs and  
11 contraband into correctional facilities. So when Digga was  
12 caught packaging weed in the jail cell at BCDC or when, for  
13 that matter, Geezy gave suboxone to Mike Gwaltney at CDF or  
14 when Digga was caught talking to Norman Handy on that same  
15 September 25th bug recording talking about getting weed into  
16 CDF, all those defendants were simply doing what incarcerated  
17 BGF members have been doing since the mid 1990s at the Cut or  
18 the Maryland House of Corrections. Make no mistake about it,  
19 ladies and gentlemen, drug smuggling in jails is racketeering  
20 activity in furtherance of BGF.

21                   That brings us to a related point. McCants has  
22 emphasized to you that he was locked up for much of the  
23 charged conspiracy in this case. That's correct. It's not a  
24 defense, especially in the context of a prison gang with BGF.  
25 You've heard from multiple witnesses that members of BGF don't

1 stop being members when they get locked up. They're still in  
2 BGF. They're still subject to BGF's rules. They still stay  
3 up to date on what's happening with fellow gang members on the  
4 street. And they still commit crimes in furtherance of the  
5 gang. During this trial, ladies and gentlemen, you've seen  
6 evidence that Mr. McCants engaged in drug trafficking,  
7 committed stabbings, and shared information about murders and  
8 other crimes with BGF members all while he was locked up. All  
9 that conduct is part of the charged conspiracy in this case.

10 McCants has also emphasized he was a juvenile until  
11 June of 2010. That's also true. But again, it's not a  
12 defense. There's no reasonable doubt that Marquise McCants  
13 continued to participate in a charged racketeering conspiracy  
14 after he turned 18. He committed the robbery in Cecil County,  
15 he was caught with weed in the jail, he committed a stabbing  
16 in the jail, he confessed to murders in the jail, he engaged  
17 in drug activity with Shawn Gregg and others, and he attempted  
18 to murder Gregory Bess.

19 By engaging in that conduct, ladies and gentlemen,  
20 Marquise McCants ratified, you heard that term from  
21 Mr. Francomano, everything he did in furtherance of the  
22 charged conspiracy as a juvenile. While you can't consider  
23 Mr. McCants's juvenile conduct as substantive evidence of his  
24 guilt, you can consider it to help you determine when  
25 Mr. McCants joined the charged conspiracy, the scope of the

1 conspiracy he agreed to join, and whether the conduct of  
2 co-conspirators was foreseeable.

3 Mr. Francomano didn't tell you about that later --  
4 that latter part this morning. He only told you what you  
5 couldn't do with the evidence. But what you can do is  
6 important because that means that you can consider all of  
7 Digga's drug dealing in furtherance of YGF, which you heard  
8 about from Christopher Meadows, when you sit down to  
9 deliberate on Count 2 and you determine whether or not drug  
10 dealing by other BGF members was foreseeable to Mr. McCants.  
11 That is permissible use of his juvenile conduct once you find  
12 that he ratified that conduct as an adult, and there's  
13 abundant evidence that he did.

14 Now, let's talk about Geezy for a minute. He argued  
15 that there's no connection between his drug dealing and the  
16 BGF Greenmount Regime. Let's dispose of that argument  
17 quickly. The evidence has shown you beyond a reasonable doubt  
18 that Geezy supplied both other drug dealers, including BGF  
19 members, as well as customers throughout the Greenmount Avenue  
20 corridor between 2005 and 2016. You heard about Geezy's drug  
21 dealing from Christopher Meadows as well as Detective  
22 Ferdinand. You heard about it from Mike Gwaltney, Mike Gray,  
23 Lamontae Smith, and Porky. You also heard about it from  
24 Kennethfer Stokes.

25 You saw evidence of Geezy's drug activity on his

1 cell phone as well as on social media. In fact, as  
2 Mr. Enzinna candidly acknowledged, Geezy himself admitted much  
3 of his drug dealing activity while testifying before you in  
4 this case. And it's not a defense, ladies and gentlemen, to  
5 point out that some of Geezy's customers weren't members of  
6 BGF. That doesn't change the fact that when Geezy distributed  
7 drugs to those individuals in the Greenmount neighborhood he  
8 was using his status as a ranking BGF member, as well as his  
9 control over street corners and alleyways in the neighborhood  
10 to sell crack and other drugs in furtherance of the gang.

11 Let's go to another topic. Heard a lot of arguments  
12 about occasions where the police didn't find fingerprints or  
13 DNA on a gun or a crime scene. You've heard arguments about  
14 evidence, including firearms, that was either destroyed or  
15 returned to its original owner. The thrust of those attacks  
16 is that the investigation of these defendants by the Baltimore  
17 Police Department, the ATF, and the FBI was somehow incomplete  
18 or untrustworthy. Ladies and gentlemen, those arguments are a  
19 red herring. They shouldn't distract you from the  
20 overwhelming evidence in this case. They shouldn't distract  
21 you from the overwhelming evidence that multiple agencies  
22 collected over the period of 12 years.

23 This isn't CSI, it's the real world. When you're  
24 talking about dozens of crimes committed over a 12-year  
25 period, there are going to be cases where evidence is disposed

1 of or where a certain kind of testing just weren't done. In  
2 those situations, ladies and gentlemen, to use a golf analogy,  
3 you just have to play the ball as it lies.

4 When these arguments are finished, Judge Bredar will  
5 instruct you that under the law the government's not required  
6 to use specific investigative techniques to prove its case and  
7 that law enforcement techniques aren't your concern. Don't  
8 worry about whether particular tests were done or whether  
9 particular forensic evidence was discovered at the scene of  
10 particular crimes. Instead, keep your eye on the ball, focus  
11 on the evidence that was recovered. Focus on the evidence  
12 that was presented during this trial because that evidence  
13 standing on its own is more than enough to convict these  
14 defendants on every single count in this case.

15 Talk about rap lyrics. Heard a lot about rap  
16 lyrics. More generally you've heard arguments that words and  
17 terminology, whether used in rap videos, social media, or jail  
18 calls, can often be misunderstood. Let's start with the rap  
19 lyrics. Ladies and gentlemen, this is not a case about rap  
20 lyrics. No one's being prosecuted for being a rapper. This  
21 is a case about a gang and the crimes that it committed and  
22 the rap lyrics you heard are simply an additional piece of  
23 context that you can use to consider the defendant's conduct  
24 and associations.

25 So when Geezy bragged in a rap video that he gets

1 n-words shot just for running their mouths, that's additional  
2 context for the other significant evidence showing that Geezy  
3 didn't hesitate to authorize violence against snitches like  
4 Rochester or Moses Malone. When Geezy rapped about the BGF  
5 n-words that run things, when he bragged about YGF being the  
6 murder team, that's additional context for the overwhelming  
7 evidence that he was the member of a gang.

8 Now, it's obviously not true every lyric rap song,  
9 for that matter, not every post that gets uploaded to social  
10 media, be taken as a literal statement of truth. But it's  
11 just as true, ladies and gentlemen, that context matters, and  
12 that sometimes depending on the facts, things people say in  
13 rap videos or things they upload to Instagram or Facebook can  
14 reveal important information about their conduct and  
15 associations. Of course, you don't need a lawyer or an expert  
16 witness to tell you that. It's simply common sense.

17 So while we're talking about common sense, let's  
18 consider the statement you heard a lot about this morning,  
19 Geezy's lyric in the "Welcome Home" video, which said, "I  
20 ain't spit the oath." Mr. Enzinna didn't give you the whole  
21 lyric. He said, "I don't know you, I ain't rocking with you,  
22 so I ain't spit the oath." Basically, I don't know you, I'm  
23 not spitting the oath to you because I don't know whether or  
24 not to reveal myself to you as BGF.

25 So use your common sense, ladies and gentlemen, to

1 evaluate the rap lyrics and the other evidence you've seen and  
2 heard. Consider that evidence not in the abstract and not  
3 from the point of view of a lawyer or an English professor  
4 like the one you heard from, rather, in the context of the  
5 facts. When you do that, you will find that the rap lyrics  
6 and other social media evidence that you heard and saw will  
7 confirm what you already know. These defendants were in fact  
8 members of the gang and they did in fact engage in violence  
9 and drug dealing in furtherance of the Greenmount Regime.

10 Let's talk about Count 2, the drug conspiracy count.  
11 You've heard evidence that each of these defendants agreed to  
12 distribute drugs, including large quantities of crack and  
13 heroin as well as marijuana and Oxycodone. The evidence has  
14 shown that from the beginning of the conspiracy, Geezy  
15 supplied crack to members of the gang, including these  
16 defendants, as well as to Norman Handy, Montel Harvey, Tangier  
17 Hitchens, Mike Gray, Michael Gwaltney, and Kennethfer Stokes.

18 You've seen the evidence on his cell phone and  
19 you've heard him admit that he sold crack, marijuana, and  
20 Oxycodone in this case. You also heard from Christopher  
21 Meadows about a single occasion where YGF members packaged and  
22 distributed a half kilogram of crack, that's 500 grams. You  
23 heard Meadows testify that members of this gang, including  
24 these defendants, were selling anywhere from \$7,000 worth or  
25 roughly seven ounces, conservatively, to \$10,000 worth or

1 roughly 10 ounces of crack cocaine every day. Multiply that  
2 by two years and you get well over the 280-gram threshold that  
3 you'll see on the verdict form for Count 2. You actually see  
4 it for Count 1 as well, because for Count 1 you're going to  
5 have to find whether or not to the extent drug dealing was a  
6 type of racketeering activity that was foreseeable to the  
7 defendants and what quantities were involved. So you should  
8 check 280 grams or more on both Counts 1 and 2.

9                   But we're not done with the crack evidence because  
10 we're not even counting the testimony of Lamontae Smith, the  
11 evidence from Geezy's and Wes Brown's cell phones, which jacks  
12 up the quantity higher. Same is true of the heroin. Meadows  
13 testified that YGF was selling 2,500- to \$5,000 worth, roughly  
14 25 grams of heroin a day. Again, multiply that two years and  
15 you get well over the 100-gram threshold that you'll see on  
16 verdict form Counts 1 and 2. And that's not counting the 51  
17 grams that were seized from Wesley Brown's house in June of  
18 2013 or all of the text messages about heroin that you saw on  
19 his phone or all the heroin-related testimony you've heard for  
20 other witnesses.

21                   Geezy, Slay, and Digga were all a part of that drug  
22 operation. With respect to Digga, you've heard again that he  
23 was a juvenile during the YGF years and that you can't  
24 consider his juvenile conduct, even if you find he ratified  
25 that conduct, as substantive evidence of guilt. But I just

1 want to emphasize again with respect to Count 2 that you can  
2 consider it for purposes of determining the scope of his  
3 agreement to distribute drugs and whether or not quantity is  
4 distributed by his co-conspirators were foreseeable.

5 And remember, while we're talking about ratification  
6 and post juvenile conduct and we're talking about Count 2,  
7 there's post-18 conduct as well. There's Digga's text  
8 messages with Shawn Gregg, the conversation with Norman Handy  
9 inside CDF about the weed. And with respect to the testimony  
10 about Gregg, Mr. Francomano made a dig deal this morning about  
11 the fact, well, how do you know a drug deal ever took place?  
12 How do you know Digga actually sold the drugs to Shawn Gregg?  
13 Nobody brought the marijuana in here. Well, that would be a  
14 good defense if we charged distribution or possession.

15 The crime charged here, ladies and gentlemen, is  
16 conspiracy. An agreement is all that is required and the text  
17 messages between Digga and Shawn Gregg speak for themselves.  
18 That was an agreement by Digga to sell Shawn Gregg marijuana.  
19 He had the price, he said he was fronting the marijuana to  
20 him, it was Blueberry Kush, I think there was even discussion  
21 about how and when Gregg would pay him back, and at the end,  
22 Digga said "don't fuck up your money." That's an agreement.  
23 Don't believe for a second that he was stunting or not telling  
24 the truth when he sent that text message to Shawn Gregg.

25 We're talking about post-18 evidence of Digga's drug

1 dealing. In context, ladies and gentlemen, the wiretap calls  
2 with Dorsey about c-line where he's talking about mixing  
3 things and making it change color, those are drug-related  
4 calls. Those are cocaine-related calls. That's the only  
5 thing that makes sense. He wasn't talking about pills. Same  
6 goes with the text messages with Mook, who Digga said on the  
7 witness stand he didn't know, about C.

8 You've also seen the drug paraphernalia that was  
9 recovered from Pioneer Drive when Digga was arrested in  
10 February of 2017. You've heard he was seen lugging a backpack  
11 containing that paraphernalia back and forth from the bathroom  
12 before he came out of the house after the long standoff when  
13 he was barricaded inside. Common sense should tell you he was  
14 lugging that backpack to and from the bathroom for a reason,  
15 flush drugs and drug-related evidence down the toilet.

16 Now, Mr. Francomano showed you the pictures inside  
17 the house where the blinds were drawn. He didn't show you the  
18 picture that we had on the document camera when Sergeant  
19 Landsman was testifying. He did remind you that Sergeant  
20 Landsman saw Digga through that basement window, which when  
21 you go back and look at photos from the Pioneer Drive crime  
22 scene, you'll see that there are no blinds on that window.  
23 That's just more misdirection, ladies and gentlemen.

24 So with respect to Count 2, there's no reasonable  
25 doubt that all three of these defendants agreed to deal drugs

1 with one another, with other defendants named in the  
2 indictment, and with other individuals both known and unknown  
3 to the grand jury.

4 Two more things to keep in mind when you think about  
5 Count 2. First, remember that everyday drug dealing is the  
6 very core of BGF's business model. On the streets and inside  
7 the jails, controlling the drug economies is the primary way  
8 in which BGF makes its money. So it's basically impossible,  
9 ladies and gentlemen, to be a BGF member without knowing that  
10 you or some other member of the gang is going to distribute  
11 narcotics.

12 Now, make no mistake about it, Count 2, you don't  
13 have to find the defendants were members of BGF to find that  
14 they were participants in the conspiracy charged in Count 2.  
15 But at the same time, it's also true that being in BGF and  
16 being in the Greenmount Regime is being in a drug conspiracy.  
17 And that's especially true of the Greenmount Regime.

18 You heard that for roughly 12 years on a daily basis  
19 members of the gang sold crack, heroin, and other drugs. They  
20 sold those drugs in a small neighborhood, which consisted of a  
21 few dozen city blocks at most. It's not unreasonable to doubt  
22 that someone who was in the gang for years, as these  
23 defendants were, would not have either participated in that  
24 activity or known at a minimum that it was taking place.

25 Finally, at least with respect to Count 2, I want to

1 talk about foreseeability and remind you again what  
2 Ms. Hoffman told you yesterday. Under the law, these  
3 defendants are liable not just for drugs they personally  
4 distributed or planned to distribute, but also for any drugs  
5 that another member of the conspiracy distributed or planned  
6 to distribute, so long as that activity was foreseeable to  
7 them.

8 Given what you've heard about the Greenmount  
9 Regime's drug operation, and this includes YGF, and the way  
10 that it operated in plain sight on the same city blocks in the  
11 same neighborhood over a period of 12 years, there should be  
12 no reasonable doubt that all of the gang's drug activity was  
13 foreseeable to all three of these defendants. There should be  
14 no reasonable doubt that that agreement included a conspiracy  
15 to distribute 100 grams or more of heroin and 280 grams or  
16 more of crack.

17 Last thing I want to talk about before I wrap up  
18 are the guns recovered from Pioneer Drive in February of 2017.  
19 You heard arguments from Mr. Francomano about the fact that  
20 the .40 caliber, the gun that was used to shoot Gregory Bess  
21 and found in the hole behind the bathroom wall, was in a  
22 disassembled state when Sergeant Landsman and his law  
23 enforcement colleagues found it on February 9th. And  
24 Mr. Francomano made a big deal of the fact that Sergeant  
25 Landsman said, well, everything was there. He didn't know it

1 was missing a spring, but they actually figured it out, put  
2 the spring in, and shot it.

3 The important thing to keep in mind for purposes of  
4 Count 8, which charges McCants of being a felon in possession  
5 of that gun, is that even though the gun was missing its  
6 spring, it still clearly met the definition of a firearm under  
7 federal law. It was still clearly designed or could be  
8 readily converted to expel a projectile by action of an  
9 explosive. That's what Mr. Wagster testified to on the  
10 witness stand. So pay no mind to the fact that the gun was  
11 missing a spring or a rider or whatever part Mr. Francomano  
12 talked about. The bottom line is it worked to shoot Gregory  
13 Bess and it worked when Mr. Wagster test fired it at the  
14 range. It was a firearm for purposes of federal law.

15 With respect to possession of that gun, the evidence  
16 shows beyond a reasonable doubt that Mr. McCants possessed  
17 that gun when he shot Gregory Bess. It also shows that he  
18 possessed it even after he was arrested because he was  
19 continuing to exert dominion and control over the firearm.  
20 He's the one who knew where it was. He's the one who was on  
21 the jail phone talking to Malik and TB on three-way calls  
22 telling them where to go and where to look for it. That's  
23 still possession, under the law.

24 Finally, with respect to the guns, let's talk about  
25 the guns in the car. Mr. Francomano talked about Sergeant

1 Landsman testifying on cross-examination. This was actually  
2 during the big dramatic part of his closing where he was  
3 saying, oh, you can scrutinize the credibility of law  
4 enforcement officers too. He tried to suggest that Sergeant  
5 Landsman was somehow uncredible when he said that the jail  
6 call -- one of the jail calls he listened to was a reference  
7 to Mr. McCants having guns in the gray Honda. And Sergeant  
8 Landsman said, well, I heard about that on a wiretap call.  
9 Mr. Francomano told you, you never heard any wiretap calls  
10 talking about guns in the gray Honda.

11 You'll remember that the reason they searched the  
12 gray Honda and ordered the K-9 scan of that was because on the  
13 night Mr. McCants was taken into custody they intercepted a  
14 telephone call in which his girlfriend Kesharna Roberson was  
15 talking to Deandre Dorsey and giving him the update on what  
16 had been taken out of the house. This was the call where she  
17 told him "he did the best he could, the bitch," that is the  
18 firearm, "sleep at PDR."

19 Now, I know we've told you that a lot of different  
20 terms that you've heard on wiretap calls and jail calls mean a  
21 gun. In the context of this case, when you use your common  
22 sense, I think you'll agree. Anyway, in that call the  
23 reference to "bitch" was a firearm. Later during the call  
24 Dorsey says, "Is everything else gone?" Or something to that  
25 effect. Roberson said, "Yeah, except that black jacket that

1 he always keep in the car." That's the wiretap call Sergeant  
2 Landsman was talking about. That's why they searched the car.  
3 You heard Mr. McCants on the jail call talking to Ms. Roberson  
4 explaining how he was going to get on the stand and get around  
5 that call. The black jacket could be anything, it could be an  
6 expensive Montclair coat, I just got to figure out what I'm  
7 going to say.

8 So we covered a lot of ground, ladies and gentlemen.  
9 We've explained that Count 1 is all about the agreement,  
10 rather than specific crimes. We've explained that our  
11 witnesses are credible, corroborated and consistent with one  
12 another. We've explained that all the conduct you've heard  
13 about was committed in furtherance of the Greenmount Regime,  
14 formerly known as YGF, and that YGF was part of the  
15 racketeering enterprise in this case. We explained why Geezy  
16 is responsible for the murder of Moses Malone. We've  
17 explained how these defendants agreed among themselves and  
18 others to distribute drugs and in quantities reflected in the  
19 indictment and on the verdict form.

20 So let me leave you with this: During this trial,  
21 thanks to the ability of law enforcement to keep its witnesses  
22 safe, you've seen evidence of BGF's rules and structure.  
23 You've seen how it operates in the jail and on the streets.  
24 You've seen that it has its own illegal economy, its own  
25 brutal system of justice, and you've seen that the overarching

1 goal of BGF, perhaps its most important goal, is to use  
2 bullets, threats, and fear aiding its members from ever being  
3 held accountable by this system of justice.

4 That's why witnesses like Moses Malone get killed.  
5 It's why people like Christopher Meadows, James Cornish, and  
6 Chop are intimidated and made into examples. People like  
7 Geezy, Slay, and Digga can terrorize a neighborhood without  
8 ever having to face a jury like you. Guess what, in this case  
9 that didn't work out for BGF. This trial has been held in a  
10 legal system of justice. Not in the system that handed down  
11 death sentences to all of the victims you heard about.

12 We're now at the end of the road. We're now at the  
13 point where you, ladies and gentlemen, must consider the  
14 evidence in light of the judge's instructions and reach a fair  
15 and impartial verdict. In this case, ladies and gentlemen,  
16 that is a verdict of guilty on each and every count as to each  
17 and every defendant. Thank you for your time.

18 THE COURT: Thank you, Mr. Martinez. Ladies and  
19 gentlemen, we'll now take a ten-minute recess. During this  
20 recess do not discuss the case with anyone. Do not discuss  
21 the case even among yourselves. Do not allow yourselves to be  
22 exposed to any news articles or reports that touch upon the  
23 case or the issues it presents or any articles or reports that  
24 relate to any of the participants in the case. Avoid all  
25 contact with any of the participants in the trial. Do not

1 make any independent investigation of the law or the facts of  
2 the case. Do not look up anything on the internet. Do not  
3 consult an encyclopedia or a dictionary. Ten minutes. Please  
4 take the jury out.

5 (Jury left the courtroom.)

6 THE COURT: Ten minutes.

7 (A recess was taken.)

8 THE COURT: Be seated, please.

9 MR. O'TOOLE: Your Honor, if you would like to  
10 address the exhibits now --

11 THE COURT: We'll do that at the end of the day  
12 after we have excused the jury.

13 MR. O'TOOLE: That's fine. Thank you.

14 THE COURT: Okay. Let's bring them in.

15 (Jury entered the courtroom.)

16 THE COURT: Be seated, please. Ladies and  
17 gentlemen, thank you for your patience and attention  
18 throughout the case. I shall now instruct you as to the law  
19 applicable to the case before you.

20 Two things before we begin. First, it is unlikely  
21 that I will complete all of these instructions before it's  
22 time for us to stop for the day. So it may be that some of  
23 the instructions will be delivered this evening with the  
24 remainder delivered when we reconvene tomorrow morning. We'll  
25 just sort of see how much progress we make over the next hour

1 or so, see where we are.

2 The second thing I wanted to tell you is that you  
3 will have a copy of these jury instructions in the jury room  
4 with you during your deliberations.

5 Let me begin by explaining our respective roles,  
6 which are quite different. It's my duty as the judge to  
7 instruct you as to the law that applies to the case. It's  
8 your duty to decide the facts, and in deciding these facts, to  
9 comply with the rules of law and apply them as I state them to  
10 you without regard to what you think the law is or should be.

11 On these legal matters, you are required to follow  
12 the law exactly as I give it to you. If any attorney has  
13 stated a legal principle different from any that I state to  
14 you in my instructions, it's my instructions that you must  
15 follow.

16 You should not single out any instruction as alone  
17 stating the law, but you should consider my instructions as a  
18 whole when you retire to deliberate in the jury room.

19 None of you should be concerned about the wisdom of  
20 any rule that I state. Regardless of any opinion that you may  
21 have as to what the law may be, or ought to be, it would  
22 violate your sworn duty to base a verdict upon any other view  
23 of the law than that which I give you.

24 Your duty is to pass upon and decide the factual  
25 issues that are in the case. You, the members of the jury,

1 are the sole and exclusive judges of the facts. You pass upon  
2 the weight of the evidence; you determine the credibility of  
3 the witnesses; you resolve such conflicts as there may be in  
4 the testimony; and you draw whatever reasonable inferences you  
5 decide to draw from the facts as you have determined them. If  
6 any expression of mine or anything I may or may not have done  
7 or said would seem to indicate any opinion relating to any  
8 factual matters, I instruct you to disregard it.

9 You are to perform the duty of finding the facts  
10 without bias or prejudice as to any party. You're to perform  
11 your final duty in an attitude of complete fairness and  
12 impartiality. This case is important to the government, for,  
13 the enforcement of criminal laws is a matter of prime concern  
14 to the community. Equally, it is important to the defendants,  
15 who are charged with serious crimes. The fact that the  
16 prosecution is brought in the name of the United States of  
17 America entitles the government to no greater consideration  
18 than that accorded to any other party to a case in litigation.  
19 By the same token, the government is entitled to no less  
20 consideration. All parties, whether government or  
21 individuals, stand as equals at the bar of justice.

22 It would be improper for you to consider, in  
23 reaching your decision as to whether the government has  
24 sustained its burden of proof, any personal feelings that you  
25 may have about the defendants' race, religion, national or

1 ethnic origin, sex, or age. All persons are entitled to the  
2 presumption of innocence and the government has the burden of  
3 proof, as I will discuss in a moment.

4 It would be equally improper for you to allow any  
5 feelings you might have about the nature of the crimes charged  
6 to interfere with your decision-making process.

7 Under your oaths as jurors, it would be improper for  
8 you to be swayed by sympathy. You're to be guided solely by  
9 the evidence in the case, and the crucial question you must  
10 ask yourselves as you sift through the evidence is: Has the  
11 government proven the -- has the government proven the guilt  
12 of the defendants beyond a reasonable doubt?

13 It's for you alone to decide whether the government  
14 has proven that the defendants are guilty of the crimes  
15 charged solely on the basis of the evidence and subject to the  
16 law as I instruct you. If you let fear or prejudice or bias  
17 or sympathy interfere with your thinking, there's a risk that  
18 you will not arrive at a true and just verdict.

19 If you have a reasonable doubt as to the defendants'  
20 guilt, you should not hesitate for any reason to find a  
21 verdict of not guilty. But on the other hand, if you should  
22 find that the government has met its burden of proving the  
23 defendants' guilt beyond a reasonable doubt, you should not  
24 hesitate because of sympathy or any other reason to render a  
25 verdict of guilty.

1                   The statements, objections, and arguments of counsel  
2 are not evidence and should not be considered by you as  
3 evidence. The evidence in this case consists of the sworn  
4 testimony of the witnesses, the exhibits received in evidence,  
5 and any stipulations.

6                   Exhibits that were marked for identification but not  
7 received may not be considered by you as evidence. Only those  
8 exhibits received may be considered as evidence. Admitted  
9 exhibits will be available for your review.

10                  You are to disregard any testimony when I have  
11 ordered it to be stricken. Only the witnesses' answers are  
12 evidence and you are not to consider a question as evidence.

13                  A stipulation is an agreement among the parties that  
14 a certain fact is true. You should regard such agreed facts  
15 as true.

16                  Anything you may have seen or heard outside the  
17 courtroom, including any newspaper or media publicity of any  
18 kind, is not evidence and must be entirely disregarded. You  
19 must limit the information you get about the case to what came  
20 to you in the courtroom through the rules of evidence.

21                  At times, a lawyer on cross-examination may have  
22 incorporated into a question a statement that assumed certain  
23 facts to be true and asked the witness if the statement was  
24 true. If the witness denies the truth of a statement, and if  
25 there is no evidence in the record proving that the assumed

1 fact is true, then you may not consider the fact to be true  
2 simply because it was contained in the lawyer's question. In  
3 short, ladies and gentlemen, questions are not evidence;  
4 answers are.

5 It's the duty of the attorney for each side of a  
6 case to object when the other side offers testimony or other  
7 evidence that the attorney believes is not properly  
8 admissible. The attorneys also have the right and duty to ask  
9 me to make rulings of law and request conferences at the bench  
10 out of the hearing of the jury. All those questions of law  
11 must be decided by me. You should not show any prejudice  
12 against an attorney or his client because the attorney  
13 objected to the admissibility of evidence, or asked for a  
14 conference out of the hearing of the jury, or asked the Court  
15 for a ruling on the law.

16 The government has presented exhibits in the form of  
17 charts and summaries. I decided to admit these charts and  
18 summaries in place of or in addition to the underlying  
19 documents that they represent in order to save time and avoid  
20 unnecessary inconvenience. The charts and summaries are no  
21 better than the testimony or the documents upon which they are  
22 based and are not themselves independent evidence. So while  
23 you are entitled to consider them, you are to give no greater  
24 consideration to these charts or summaries than you would give  
25 to the evidence upon which they are based.

1                   It's for you to decide whether the charts,  
2 schedules, or summaries correctly present the information  
3 contained in the testimony and in the exhibits on which they  
4 were based. You are entitled to consider the charts,  
5 schedules, and summaries if you find that they are of  
6 assistance to you in analyzing the evidence and understanding  
7 the evidence.

8                   As I've told you, a stipulation of facts is an  
9 agreement among the parties that a certain fact is true. You  
10 must regard such agreed facts as true.

11                  Ladies and gentlemen, although the defendants have  
12 been indicted, you must remember that an indictment is only an  
13 accusation to which the defendants have pleaded not guilty.  
14 As a result of the defendants' pleas of not guilty, the burden  
15 is on the prosecution to prove guilt beyond a reasonable  
16 doubt. This burden never shifts to the defendants for the  
17 simple reason that the law never imposes upon a defendant in a  
18 criminal case the burden or duty of calling any witness or  
19 producing any evidence.

20                  The law presumes the defendants to be innocent of  
21 the charges against them. I therefore instruct you that the  
22 defendants are presumed by you to be innocent throughout your  
23 deliberations until such time, if ever, you as a jury are  
24 satisfied that the government has proven that defendant guilty  
25 beyond a reasonable doubt.

The defendants begin the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit a defendant unless you as jurors are unanimously convinced beyond a reasonable doubt of that defendants' guilt, after a careful and impartial consideration of all of the evidence in this case. If the government fails to sustain its burden, you must find the defendants not guilty.

This presumption was with the defendants when the trial began and remains with them even now as I speak to you and will continue with them into your deliberations unless and until you are convinced that the government has proven the defendants' guilt beyond a reasonable doubt.

The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. By the same token, you do not have to accept the testimony of any witness who has not been contradicted or impeached, if you find the witness not to be credible. You also have to decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your own common sense and personal experience. After examining all the evidence, you may decide that the party calling the most witnesses has not persuaded you because you do not believe its witnesses, or because you do believe the fewer witnesses called by the other side.

1                   In a moment, I will discuss the criteria for  
2 evaluating credibility; for the moment, however, you should  
3 keep in mind that the burden of proof is always on the  
4 government and the defendants are not required to call any  
5 witnesses or offer any evidence, since they are presumed to be  
6 innocent.

7                   You're about to be asked to decide whether or not  
8 the government has proven beyond a reasonable doubt the guilt  
9 of the defendants before you. You're not being asked whether  
10 any other person has been proven guilty.

11                  Some of the other co-defendants were not on trial  
12 and you're not being asked to reach verdicts as to those other  
13 co-defendants. You're not to be concerned with the other  
14 co-defendants, nor are you to speculate about the reasons why  
15 they are not a part of this trial. Any co-defendant's absence  
16 from this trial should not affect or influence your verdict  
17 with respect to these defendants now before you.

18                  Your verdicts should be based solely upon the  
19 evidence or lack of evidence as to each defendant before you,  
20 in accordance with my instructions and without regard to  
21 whether the guilt of other people has or has not been proven.

22                  You may not draw any inference, favorable or  
23 unfavorable, towards the government or the defendants, from  
24 the fact that certain persons were not named as defendants in  
25 the indictment. The fact that these persons were not indicted

1 must play no part in your deliberations. Therefore, you may  
2 not consider it in any way in reaching your verdict as to the  
3 defendants on trial.

4                   Ladies and gentlemen, there are two types of  
5 evidence that you may properly use in deciding whether a  
6 defendant is guilty or not guilty.

7                   One type of evidence is called direct evidence.  
8 Direct evidence is where a witness testifies to what he or she  
9 saw, heard, or observed. In other words, when a witness  
10 testifies about what is known to him or her, of his or her own  
11 knowledge by virtue of his or her own senses, what he or she  
12 sees, feels, touches, or hears, that's called direct evidence.

13                   Circumstantial evidence is evidence that tends to  
14 prove a disputed fact by proof of other facts. Let me give  
15 you a simple example of circumstantial evidence.

16                   Assume that when you came into the courthouse this  
17 morning the sun was shining and it was a nice day. Assume  
18 that the courtroom has no windows and you could not look  
19 outside.

20                   As you were sitting here, some hours later, someone  
21 walked in to the courtroom with an umbrella that was dripping  
22 wet. Someone else then walked in with a raincoat that was  
23 also dripping wet.

24                   Now, you cannot look outside of the courtroom and  
25 you cannot see whether or not it is raining. So you have no

1 direct evidence of that fact. But on the combination of facts  
2 that I have asked you to assume, someone coming in with a wet  
3 umbrella, someone else coming in with a wet raincoat, it would  
4 be reasonable and logical for you to conclude that it had  
5 started raining outside.

6 That's all there is to circumstantial evidence. You  
7 infer on the basis of reason, experience, and common sense  
8 from an established fact, wet umbrella, wet raincoat, the  
9 existence or the nonexistence of some other fact, it's raining  
10 outside.

11 Circumstantial evidence is of no less value than  
12 direct evidence; for, it's a general rule that the law makes  
13 no distinction between direct and circumstantial evidence, but  
14 simply requires that before convicting a defendant, the jury  
15 must be satisfied of the defendant's guilt beyond a reasonable  
16 doubt from all of the evidence in the case.

17 During the trial you've heard the attorneys use the  
18 term "inference," and in their arguments they may ask you to  
19 infer, on the basis of your reason, experience, and common  
20 sense, from one or more established facts, the existence of  
21 some other fact. An inference is not a suspicion or a guess.  
22 It's a reasoned, logical decision to conclude that a disputed  
23 fact exists on the basis of another fact that you know exists.

24 There are times when different inferences may be  
25 drawn from facts, whether proved by direct or circumstantial

1 evidence. The government asks you to draw one set of  
2 inferences, while the defense asks you to draw another. It's  
3 for you, and you alone, to decide what inferences you will  
4 draw. The process of drawing inferences from facts in  
5 evidence is not a matter of guesswork or speculation. An  
6 inference is a deduction or a conclusion that you, the jury,  
7 are permitted to draw, but are not required to draw, from the  
8 facts that have been established by either direct or  
9 circumstantial evidence. In drawing inferences, you should  
10 exercise your common sense.

11 So while you are considering the evidence presented  
12 to you, you are permitted to draw, from the facts that you  
13 find to be proven, such reasonable inferences as would be  
14 justified in light of your experience.

15 Here, again, let me remind you that, whether based  
16 upon direct or circumstantial evidence, or upon the logical,  
17 reasonable inferences drawn from such evidence, you must be  
18 satisfied of the guilt of a defendant beyond a reasonable  
19 doubt before you may convict him.

20 Because, you, the jurors, are the sole judges of the  
21 facts, you're also the sole judges of the credibility of the  
22 witnesses, and it's up to you to decide what weight, if any,  
23 should be given to a witness's testimony. You're not required  
24 to believe any witness even though his or her testimony is  
25 uncontradicted.

1                   In deciding whether or not to believe a witness, you  
2 should carefully scrutinize all of the testimony of each  
3 witness, the circumstances under which each witness has  
4 testified, and any other matter in evidence that may help you  
5 to decide the truth and the importance of each witness's  
6 testimony.

7                   You should consider a witness's demeanor and manner  
8 of testifying on the stand. Was the witness candid, frank,  
9 and forthright? Or, did the witness seem as if he or she was  
10 hiding something, being evasive or suspect in some way? How  
11 did the way the witness testified on direct examination  
12 compare with the way the witness testified on  
13 cross-examination? Was the witness consistent in his or her  
14 testimony or did he or she contradict himself or herself? Did  
15 the witness appear to know what he or she was talking about  
16 and did the witness strike you as someone who was trying to  
17 report his or her knowledge accurately?

18                   You should also consider whether a witness may have  
19 been biased. Does the witness have a relationship with the  
20 government or a defendant that may affect how he or she  
21 testified? Does the witness have some incentive, loyalty, or  
22 motive that might cause him or her to shade the truth; or does  
23 the witness have some bias, prejudice, or hostility that might  
24 have caused the witness, consciously or not, to give you  
25 something other than a completely accurate account of the

1 facts he or she testified to?

2 Another consideration is the witness's opportunity  
3 to observe the matters about which he or she testified, as  
4 well as the witness's ability to express himself or herself.

5 Inconsistencies or discrepancies in the testimony of  
6 a witness, or between the testimonies of different witnesses,  
7 may or may not cause you to discredit such testimony. Two or  
8 more persons witnessing an incident or a transaction may see  
9 or hear it differently; an innocent misrecollection, like a  
10 failure of recollection, is not an uncommon experience. In  
11 weighing the effect of a discrepancy, always ask yourself  
12 whether it pertains to a matter of importance or an  
13 unimportant detail, and whether the discrepancy results from  
14 innocent error or intentional falsehood.

15 You've heard the testimony of law enforcement  
16 officials. The fact that a witness may be employed by the  
17 federal government, or a state or local government as a law  
18 enforcement official, does not mean that his or her testimony  
19 is necessarily deserving of more or less consideration or  
20 greater or lesser weight than that of an ordinary witness.

21 Ladies and gentlemen, it's your decision, after  
22 reviewing all the evidence, whether to accept the testimony of  
23 a law enforcement witness and to give that testimony whatever  
24 weight, if any, you find it deserves.

25 After you have considered all the factors bearing

1 upon the credibility of a witness that I have mentioned to  
2 you, you may decide to accept all of the testimony of a  
3 particular witness, none of the testimony of a particular  
4 witness, or part of the testimony of a particular witness. In  
5 other words, ladies and gentlemen, you may give the testimony  
6 of any witness such credibility and weight, if any, as you may  
7 think it deserves.

8 You have heard testimony from government witnesses  
9 who pled guilty to criminal charges. You're instructed that  
10 you are to draw no conclusions or inferences of any kind about  
11 the guilt of the defendants on trial from the fact that any  
12 prosecution witness pled guilty to criminal charges. That  
13 witness's decision to plead guilty was a personal decision  
14 about his own guilt. It may not be excused in any way as  
15 evidence against or unfavorable to the defendants on trial  
16 here.

17 You've heard witnesses who testified that they were  
18 actually involved in planning and carrying out crimes alleged  
19 in the indictment. Some of these witnesses pled guilty and  
20 entered into agreements with the government to testify. The  
21 government is permitted to enter into this kind of plea  
22 agreement. There's been a great deal said about these  
23 so-called accomplices in the summations of counsel and whether  
24 or not you should believe them.

25 The government argues, as it's permitted to do, that

1 it must take the witnesses as it finds them. It argues that  
2 only people who themselves take part in criminal activity have  
3 the knowledge required to show criminal behavior by others.  
4 For those very reasons the law allowed the use of accomplice  
5 testimony. Indeed, it is the law in federal courts that the  
6 testimony of accomplices may be enough in itself for  
7 conviction, if the jury finds that the testimony establishes  
8 guilt beyond a reasonable doubt.

9                   However, it is also the case that accomplice  
10 testimony is of such a nature that it must be scrutinized with  
11 great care and viewed with particular caution when you decide  
12 how much of that testimony to believe.

13                   I've given you some general considerations on  
14 credibility and I will not repeat them all here, nor will I  
15 repeat all the arguments made on both sides. However, let me  
16 say a few things that you may want to consider during your  
17 deliberations on the subject of accomplices.

18                   You should ask yourselves whether these so-called  
19 accomplices would benefit more by lying or by telling the  
20 truth. Was their testimony made up in any way because they  
21 believed or hoped that they would somehow receive favorable  
22 treatment by testifying falsely? Or did they believe that  
23 their interests would be best served by testifying truthfully?  
24 If you believe that the witness was motivated by hopes of  
25 personal gain, was the motivation one that would cause him to

1 lie, or was it one that would cause him to tell the truth?

2 Did this motivation color his testimony?

3 You should bear in mind that a witness who has  
4 entered into a plea agreement that requires the witness to  
5 testify has an interest in this case different from any  
6 ordinary witness. A witness who realizes that he may be able  
7 to obtain his own freedom or receive a lighter sentence by  
8 giving testimony favorable to the prosecution has a motive to  
9 testify falsely. Therefore, you must examine his testimony  
10 with caution and weigh it with great care. If, after  
11 scrutinizing his testimony, you decide to accept it, you may  
12 give it whatever weight, if any, you find it deserves.

13 In sum, you should look at all the evidence in  
14 deciding what credence and what weight, if any, you will want  
15 to give to the testimony of accomplice witnesses.

16 You've heard evidence that a witness made a  
17 statement on an earlier occasion that counsel may argue is  
18 inconsistent with the witness's trial testimony. Evidence of  
19 the prior inconsistent statement was placed before you for the  
20 limited purpose of helping you decide whether to believe the  
21 trial testimony of the witness. If you find that the witness  
22 made an earlier statement that conflicts with his or her trial  
23 testimony, you may consider that fact in deciding how much of  
24 his or her trial testimony, if any, to believe.

25 In making this determination, you may consider

1 whether the witness purposely made a false statement or  
2 whether it was an innocent mistake; whether the inconsistency  
3 concerns an important fact, or whether it had to do with a  
4 small detail; whether the witness had an explanation for the  
5 inconsistency; and whether that explanation appealed to your  
6 common sense.

7 It is exclusively your duty, based upon all the  
8 evidence and your own good judgment, to determine whether the  
9 prior statement was inconsistent, and if so how much, if any,  
10 weight to be given to the inconsistent statement in  
11 determining whether to believe all or part of the witness's  
12 testimony.

13 There's been evidence introduced at trial that the  
14 government called as a witness a person who was using drugs  
15 when the events he observed took place or who is now using  
16 drugs. I instruct you that there is nothing improper about  
17 calling such a witness to testify about events within his  
18 personal knowledge.

19 On the other hand, his testimony must be examined  
20 with greater scrutiny than the testimony of any other witness.  
21 The testimony of a witness who was using drugs at the time of  
22 the events he is testifying about, or who is using drugs at  
23 the time of his testimony may be less believable because of  
24 the effect the drugs may have on his ability to perceive or  
25 relate the events in question.

1           If you decide to accept his testimony, after  
2 considering it in light of all of the evidence in this case,  
3 then you may give it whatever weight, if any, you find it  
4 deserves.

5           You've heard the testimony of witnesses who have  
6 been promised that in exchange for testifying truthfully,  
7 completely, and fully, the government will not use any of  
8 their testimony against them in any criminal case. These  
9 promises were not a formal order of immunity by the Court, but  
10 were arranged directly between the witnesses and the  
11 government.

12           The government is permitted to make these kinds of  
13 promises and is entitled to present as witnesses people to  
14 whom these promises are given. You are instructed that you  
15 may convict a defendant on the basis of such a witness's  
16 testimony alone, if you find that his testimony provides --  
17 proves the defendant guilty beyond a reasonable doubt.

18           However, the testimony of a witness who has been  
19 promised that his statements will not be used against him  
20 should be examined by you with greater care than the testimony  
21 of an ordinary witness. You should scrutinize it closely to  
22 determine whether or not it is colored in such a way as to  
23 place guilt upon a defendant in order to further the witness's  
24 own interests; for, such a witness, confronted with the  
25 realization that his statements will not be used against him

1 in any criminal prosecution, may have a motive to falsify his  
2 testimony.

3 Such testimony should be received by you with  
4 suspicion and you may give it such weight, if any, as you  
5 believe it deserves.

6 The government has offered evidence in the form of  
7 recordings of conversations with the defendants. These  
8 recordings were made without the knowledge of the defendants,  
9 but with court authorization.

10 The use of this procedure to gather evidence is  
11 lawful, and the government is entitled to use the recordings  
12 in this case.

13 The government has been permitted to hand out typed  
14 documents, transcripts, which it prepared containing the  
15 government's interpretation of what appears on the recordings  
16 that have been received as evidence. Those documents or  
17 transcripts were given to you as an aid or guide to assist you  
18 in listening to the calls. However, they are not in and of  
19 themselves evidence. Therefore, when the calls were played, I  
20 advised you to listen very carefully to the calls themselves.  
21 You alone should make your own interpretation of what appears  
22 on the calls based on what you heard. If you think you heard  
23 something differently from what appeared on the transcript,  
24 then what you heard is controlling. Let me say again, you,  
25 the jury, are the sole judges of the facts.

1 Let's take a stretch break, ladies and gentlemen.

2 (Pause in the proceedings.)

3 THE COURT: Be seated, please.

4 Ladies and gentlemen, in a criminal case, a  
5 defendant cannot be required to testify, but if a defendant  
6 chooses to testify, he is, of course, permitted to take the  
7 witness stand on his own behalf. In this case, all three of  
8 the defendants decided to testify. You should examine and  
9 evaluate the testimony of each defendant just as you would the  
10 testimony of any witness with an interest in the outcome of  
11 the case.

12 Ladies and gentlemen, there's been evidence that one  
13 or more of the defendants made certain statements in which the  
14 government claims he admitted certain relevant facts.

15 I instruct you that you are to give the statements  
16 such weight as you feel they deserve in light of all of the  
17 evidence.

18 You are cautioned that the evidence of one  
19 defendant's statement to the authorities after his arrest  
20 about his own conduct may not be considered or discussed by  
21 you in any way with respect to any defendant on trial other  
22 than the defendant who made the statement.

23 You've heard testimony that some of the defendants  
24 made certain statements outside the courtroom to law  
25 enforcement authorities in which the defendant claimed that

1 his conduct was consistent with innocence and not with guilt.

2 The government claims that these statements in which he

3 exonerated or exculpated himself are false.

4 If you find that the defendant gave a false  
5 statement in order to divert suspicion from himself, you may,  
6 but are not required, to infer that the defendant believed  
7 that he was guilty. You may not, however, infer on the basis  
8 of this alone, that the defendant is, in fact, guilty of the  
9 crime for which he is charged.

10 Whether or not the evidence as to a defendant's  
11 statements show that the defendant believed that he was  
12 guilty, and the significance, if any, to be attached to any  
13 such evidence, are matters for you, the jury, to decide.

14 You've heard testimony that informants were used by  
15 the government to investigate the defendants.

16 There's nothing improper or illegal with the  
17 government using this technique. Indeed, certain types of  
18 evidence would be extremely difficult to detect without the  
19 use of informants.

20 You're instructed that there's no legal requirement  
21 for the government to use any specific investigative technique  
22 to prove its case. Law enforcement techniques are not your  
23 concern.

24 Moreover, the law does not require the prosecution  
25 to call as witnesses all persons who have been present at any

1 time or place involved in the case, or who may appear to have  
2 some knowledge of the matters at issue in this trial. Nor  
3 does the law require the prosecution to produce as exhibits  
4 all papers and things mentioned in the evidence.

5 You've also heard testimony in this case regarding  
6 evidence seized by the government during the execution of  
7 search warrants. You are hereby instructed that it is the  
8 responsibility of the Court alone to determine the validity  
9 and legality of those search warrants and other searches, and  
10 the Court has determined that the searches in this case were  
11 valid and legal. It's up to you to decide what significance,  
12 if any, the evidence seized may have in this case.

13 You've heard testimony from certain persons who were  
14 qualified as expert witnesses. An expert is allowed to  
15 express his or her opinion on those matters about which he or  
16 she has special knowledge and training. Expert testimony is  
17 presented to you on the theory that someone who is experienced  
18 in the field can assist you in understanding the evidence or  
19 in reaching an independent decision on the facts.

20 In weighing the expert's testimony, you may consider  
21 the expert's qualifications, his or her opinions, his or her  
22 reasons for testifying, as well as all the other  
23 considerations that ordinarily apply when you are deciding  
24 whether or not to believe a witness's testimony. You may give  
25 the expert testimony whatever weight, if any, you find it

1 deserves in light of all of the evidence in this case. You  
2 should not, however, accept this witness's testimony merely  
3 because he or she is an expert; nor should you substitute it  
4 for your own reason, judgment, and common sense. The  
5 determination of the facts in this case rests solely with you.

6 We shall next consider the crimes with which the  
7 defendants are charged in the indictment, and I shall discuss  
8 with you the rules of law that govern whether the crimes  
9 charged have been proven. Each alleged crime is charged in  
10 the indictment in what is called a count. Whenever I refer to  
11 "the indictment" in these instructions, I'm referring to the  
12 second Superseding Indictment, the actual charging instrument  
13 in this particular case.

14 The jury must consider each count against each  
15 defendant separately, and the burden is always upon the  
16 government to prove each count beyond a reasonable doubt. In  
17 reaching your verdict, bear in mind that guilt is personal and  
18 individual. Your verdict of guilty or not guilty must be  
19 based solely upon the evidence about each defendant. The case  
20 against each defendant, on each count, stands or falls upon  
21 the proof or lack of proof against that defendant alone, and  
22 your verdict as to any defendant on any count should not  
23 control your decision as to any other defendant or any other  
24 count. No other considerations are proper.

25 Keep in mind, and I remind you, you will be provided

1 add copy of these instructions for your use during  
2 deliberations.

3                   While we're on the subject of the indictment, I  
4 should draw your attention to the fact that the indictment  
5 charges that specific acts occurred on or about certain dates.  
6 The proof need not establish with any certainty the exact date  
7 of the specific act charged. It's sufficient if the evidence  
8 in this case establishes that an offense was committed on a  
9 date reasonably near the dates alleged in the indictment. The  
10 law only requires a substantial similarity between the date  
11 alleged in the indictment and the date established by  
12 testimony or exhibits.

13                   The indictment alleges that the conspiracy began in  
14 or about 2005 and continued until the date of the indictment  
15 on September 20th, 2017. You need not find that the starting  
16 date of a conspiracy coincides with the starting date alleged  
17 in the indictment in order to render a guilty verdict.  
18 Rather, you may find that the starting date of a conspiracy  
19 began any time in the window alleged in the indictment.

20                   In order to sustain its burden of proof, the  
21 government must prove that the defendants acted knowingly. A  
22 person acts knowingly if he intentionally and voluntarily --  
23 if he acts intentionally and voluntarily, and not because of  
24 ignorance, mistake, accident, or carelessness. Whether a  
25 defendant acted knowingly may be proven by a defendant's

1 conduct and by all of the facts and circumstances surrounding  
2 the case.

3 You have been instructed that in order to sustain  
4 its burden of proof the government must prove that the  
5 defendants acted willfully. Willfully means to act with  
6 knowledge that one's conduct is unlawful and with the intent  
7 to do something the law forbids, that is to say, with the bad  
8 purpose to disobey or disregard the law.

9 A defendant's conduct was not willful if it was due  
10 to negligence, inadvertence, or mistake.

11 The government must prove beyond a reasonable doubt  
12 that the defendants acted intentionally when they committed  
13 the crimes charged in the indictment. Before you can find  
14 that a defendant acted intentionally, you must be satisfied  
15 beyond a reasonable doubt that he acted deliberately and  
16 purposefully. That is, a defendant's acts must have been the  
17 product of that defendant's conscious objective rather than  
18 the product of a mistake or an accident.

19 Intent ordinarily may not be proved directly,  
20 because there's no way of fathoming or scrutinizing the  
21 operations of the human mind. But you may infer a defendant's  
22 intent from the surrounding circumstances. You may consider  
23 any statement made, any act done or omitted by the defendant,  
24 and all other facts and circumstances in evidence that  
25 indicate his state of mind.

1                   You may consider it reasonable to draw the  
2 inferences and find that a person intends the natural and  
3 probable consequences of acts knowingly done or knowingly  
4 omitted. As I have said, it's entirely up to you to decide  
5 what facts to find from the evidence.

6                   Knowledge, willfulness, and intent involve the state  
7 of a person's mind. The state of one's mind is a fact.  
8 Accordingly, this is a fact you are called upon to decide.

9                   Medical science has not yet devised an instrument  
10 capable of recording what was in one's mind in the distant  
11 past. Rarely is direct proof available to establish the state  
12 of one's mind. However, state of mind may be inferred from  
13 what one says or does: One's words, one's actions, and one's  
14 conduct, as of the time of the occurrence of certain events.

15                  The intent with which an act is done is often more  
16 clearly and conclusively shown by the act itself, or by a  
17 series of acts, than by words or explanations of the act  
18 uttered long after its occurrence. Accordingly, intent,  
19 willfulness, and knowledge are usually established by  
20 surrounding facts and circumstances as of the time the acts in  
21 question occurred, or the events took place, and the  
22 reasonable inferences to be drawn from them.

23                  Willful intent or guilty knowledge may be inferred  
24 from the secretive or irregular manner in which a transaction  
25 is carried out.

1 Proof of motive is not a necessary element of the  
2 crimes with which the defendants are charged.

3 Proof of motive does not establish guilt, nor does a  
4 lack of proof of motive establish that a defendant is  
5 innocent.

6 If the guilt of a defendant is shown beyond a  
7 reasonable doubt, it's immaterial what the motive for the  
8 crime may be -- or whether any motive be shown, but the  
9 presence or absence of motive is a circumstance you may  
10 consider as bearing on the intent of a defendant.

11 The defendants named in Counts 1, 2, and 3 are  
12 accused of having been members of a conspiracy to violate  
13 certain federal laws. All of the defendants are charged in  
14 Counts 1 and 2. Defendant Gerald Johnson is charged in Count  
15 3.

16 I will now explain to you the law on conspiracy. I  
17 will then explain to you the law on each individual count in  
18 the indictment.

19 A conspiracy is a kind of criminal partnership -- a  
20 combination or agreement of two or more persons to join  
21 together to accomplish an unlawful purpose.

22 The crime of conspiracy to violate a federal law is  
23 an independent offense. It is separate and distinct from the  
24 actual violation of any specific federal laws, which the law  
25 refers to as substantive crimes.

1                   Indeed, you may find a defendant guilty of the crime  
2 of conspiracy to commit an offense against the United States  
3 even though the substantive crime that was the object of the  
4 conspiracy was not actually committed.

5                   In order to satisfy its burden of proof as to Counts  
6 1, 2, and 3, the government must establish for each count,  
7 each of the following two essential elements beyond a  
8 reasonable doubt: First, that two or more persons entered the  
9 unlawful agreement charged in the count; second, that the  
10 defendant in question knowingly and willfully joined the  
11 unlawful agreement charged by that count.

12                  The first element the government must prove beyond a  
13 reasonable doubt to establish the offense of conspiracy is  
14 that two or more persons entered the unlawful agreement  
15 charged in the indictment.

16                  In order for the government to satisfy this element,  
17 you need not find that the alleged members of the conspiracy  
18 met together and entered into any express or formal agreement.  
19 Similarly, you need not find that the alleged conspirators  
20 stated, in words or in writing, what the scheme was, its  
21 object or purpose, or every precise detail of the scheme or  
22 the means by which its object or purpose was to be  
23 accomplished. What the government must prove is that there  
24 was a mutual understanding, either spoken or unspoken, between  
25 two or more people to cooperate with each other to accomplish

1 an unlawful act.

2 You may, of course, find that the existence of an  
3 agreement to disobey or disregard the law has been established  
4 by direct proof. However, since conspiracy is, by its very  
5 nature, characterized by secrecy, you may also infer its  
6 existence from the circumstances of this case and the conduct  
7 of the parties involved.

8 In a very real sense, then, in the context of  
9 conspiracy cases, actions often speak louder than words. In  
10 this regard, you may, in determining whether an agreement  
11 existed here, consider the actions and statements of all of  
12 those you find to be participants as proof that a common  
13 design existed on the part of the persons charged to act  
14 together to accomplish an unlawful act.

15 The second element the government must prove beyond  
16 a reasonable doubt to establish the offense of conspiracy is  
17 that a defendant knowingly, willfully, and voluntarily became  
18 a member of the conspiracy.

19 If you are satisfied that the conspiracy charge in  
20 the indictment existed, then you must next ask yourselves who  
21 the members of that conspiracy were. In deciding whether a  
22 particular defendant was, in fact, a member of the conspiracy,  
23 you should consider whether that defendant knowingly and  
24 willfully joined the conspiracy. Did he participate in it  
25 with knowledge of its unlawful purpose and with the specific

1 intention of furthering its business or objective as an  
2 associate or worker?

3 In that regard it has been said that in order for a  
4 defendant to be deemed a participant in a conspiracy, he must  
5 have had a stake in the venture or its outcome. You're  
6 instructed that, while proof of a financial interest in the  
7 outcome of a scheme is not essential, if you find that a  
8 defendant had such an interest, then that is a factor you may  
9 properly consider in determining whether or not a defendant  
10 was a member of the conspiracy charged in the indictment.

11 As I mentioned a moment ago, before a defendant can  
12 be found to have been a conspirator, you must find that he  
13 knowingly joined in the unlawful agreement or plan. The key  
14 question, therefore, is whether a defendant joined the  
15 conspiracy with an awareness of at least some of the basic  
16 aims and purposes of the unlawful agreement.

17 It is important for you to note that a -- it is  
18 important for you to note that a defendant's participation in  
19 a conspiracy must be established by independent evidence of  
20 his own acts or statements as well as those of other alleged  
21 co-conspirators and the reasonable inferences that may be  
22 drawn from them.

23 A defendant's knowledge is a matter of inference  
24 from the facts proved. In that connection, I instruct you  
25 that to become a member of the conspiracy, a defendant need

1 not have known the identities of each and every other member,  
2 nor need he have been apprised of all of their activities.  
3 Moreover, a defendant need not have been fully informed as to  
4 all of the details or the scope of the conspiracy in order to  
5 justify an inference of knowledge on his part. Furthermore, a  
6 defendant need not have joined in all of the conspiracy's  
7 unlawful objectives.

8 The extent of a defendant's participation has no  
9 bearing on the issue of a defendant's guilt. A conspirator's  
10 liability is not measured by the extent or duration of his  
11 participation. Indeed, each member may perform separate and  
12 distinct acts and may perform them at different times. Some  
13 conspirators may play major roles, while others play minor  
14 parts in the scheme. An equal role is not what the law  
15 requires. In fact, even a single act may be sufficient to  
16 draw a defendant within the ambit of the conspiracy.

17 I want to caution you, however, that a defendant's  
18 mere presence at the scene of the alleged crime does not, by  
19 itself, make him a member of the conspiracy. Similarly, mere  
20 association with one or more members of the conspiracy does  
21 not automatically make a defendant a member. A person may  
22 know or be friendly with a criminal without being a criminal  
23 himself. Mere similarity of conduct or the fact that they may  
24 have assembled together and discussed common aims and  
25 interests does not necessarily establish proof of the

1 existence of a conspiracy.

2 I also want to caution you that mere knowledge or  
3 acquiescence, without participation, in the unlawful plan is  
4 not sufficient. Moreover, the fact that the acts of a  
5 defendant, without knowledge, merely happen to further the  
6 purposes or objectives of the conspiracy, does not make that  
7 defendant a member. More is required under the law. What is  
8 necessary is that a defendant must have participated with  
9 knowledge of at least some of the purposes or objectives of  
10 the conspiracy and with the intention of aiding in the  
11 accomplishment of those unlawful ends.

12 A mere buyer-seller relationship is insufficient to  
13 support a conviction for conspiracy to distribute controlled  
14 substances. However, such evidence is at least relevant, that  
15 is probative, on the issue of whether a conspiratorial  
16 relationship exists. Evidence of continuing relationships and  
17 repeated transactions can support the finding that there was a  
18 conspiracy, especially when coupled with a substantial  
19 quantity of drugs.

20 In sum, a defendant, with the understanding of the  
21 unlawful character of the conspiracy, must have intentionally  
22 engaged, advised, or assisted in it for the purpose of  
23 furthering the illegal undertaking. He thereby becomes a  
24 knowing and willing participant in the unlawful agreement,  
25 that is to say, a conspirator.

1                   In order to prove a defendant guilty of the  
2 conspiracies charged in Counts 1, 2, and 3 of the indictment,  
3 the government must establish beyond a reasonable doubt that  
4 the defendant became a member of the conspiracy after the age  
5 of 18. Or, if he became a member of the conspiracy prior to  
6 the age of 18, that he ratified his prior participation in the  
7 conspiracy. A defendant's conduct prior to age of 18 cannot  
8 by itself sustain a finding of guilt as to Counts 1, 2, and 3.  
9 Only if you find that the defendant has undertaken some  
10 conduct after the age of 18, which ratifies or affirms his  
11 status as a member of the conspiracy, can you find him guilty  
12 of Counts 1, 2, or 3.

13                   If you find that the defendant has undertaken  
14 conduct after the age of 18 that ratifies his prior  
15 participation in the conspiracy, you may not consider that  
16 prior conduct as substantive evidence of guilt. You may,  
17 however, consider the defendant's prior conduct as evidence of  
18 when he joined the conspiracy, the scope of the conspiracy he  
19 agreed to, and the foreseeability of the acts of  
20 co-conspirators.

21                   You will recall that I've admitted into evidence  
22 against the defendants the acts and statements of other  
23 persons because the government charges that these acts and  
24 statements were committed by persons who were also  
25 confederates or co-conspirators of the defendants on trial.

1 The reason for allowing this evidence to be received against a  
2 defendant has to do with the nature of the crime of  
3 conspiracy. A conspiracy is often referred to as a  
4 partnership in crime. Thus, as in other types of  
5 partnerships, when people enter into a conspiracy to  
6 accomplish an unlawful act, each and every member becomes an  
7 agent for the other conspirators in carrying out the  
8 conspiracy.

9 Accordingly, the reasonably foreseeable acts,  
10 declaration, statements, and omissions of any member of the  
11 conspiracy done in furtherance of the common purpose of the  
12 conspiracy, are deemed, under law, to be the acts of all of  
13 the members, and all of the members are responsible for such  
14 acts, declarations, statements, and omissions.

15 If you find, beyond a reasonable doubt, that a  
16 defendant was a member of the conspiracy charged in the  
17 indictment, then any reasonably foreseeable acts done or  
18 statements made in furtherance of the conspiracy by persons  
19 also found by you to have been members of that conspiracy, may  
20 be considered against that defendant. This is so even if such  
21 acts were done and statements were made in that defendant's  
22 absence and without his or her knowledge.

23 However, before you may consider the statements or  
24 acts of a co-conspirator in deciding the issue of a  
25 defendant's guilt, you must first determine that the acts and

1 statements were made during the existence, and in furtherance,  
2 of the unlawful scheme. If the acts were done or the  
3 statements made by someone whom you do not find to have been a  
4 member of the conspiracy, or if they were not done or said in  
5 furtherance of the conspiracy, they may be considered by you  
6 as evidence only against the member who did or said them.

7 We will next consider the specific crimes with which  
8 the defendants are charged in the second Superseding  
9 Indictment. Whenever in these instructions I refer to "the  
10 indictment," I am of course referring to the second  
11 Superseding Indictment.

12 I turn to the specific counts. Count 1 of the  
13 indictment charges the defendants with conspiracy to violate  
14 the Racketeer Influenced and Corrupt Organizations Act, the  
15 RICO Act. This means that the defendants have been charged  
16 with conspiracy to conduct or participate in the affairs of an  
17 enterprise through a pattern of racketeering activity.

18 The charging language of Count 1 is lengthy, and I  
19 shall not read all of the formal charge to you because of its  
20 length. Instead, I shall point out that the government  
21 alleges that the defendants were members of an organization  
22 known today as the Black Guerilla Family's Greenmount Avenue  
23 Regime, formerly known as the Young Guerilla Family or YGF. I  
24 shall now read the operative language of Count 1.

25 Beginning in or about 2005 and continuing until on

1 or about the date of the second Superseding Indictment, in the  
2 District of Maryland and elsewhere, the defendants, Gerald  
3 Thomas Johnson, a/k/a Geezy, a/k/a Geezy the Prince; Wesley  
4 Jamal Brown, a/k/a Shike White, a/k/a Wes, a/k/a West Coast,  
5 a/k/a Coasta; David Albert Hunter, a/k/a Lil' Dave, a/k/a  
6 Dave; Montel Harvey, a/k/a Telly, a/k/a Telephone, a/k/a Big  
7 Head; Kenneth Jones, a/k/a K-Slay, a/k/a Slay; Kenneth Lee  
8 Faison, a/k/a Roscoe; Joseph Lawrence Bonds, a/k/a Joe, a/k/a  
9 Yo Gotti; Norman Tyrone Handy, a/k/a Lil' Norm, a/k/a Norm;  
10 and Marquise McCants, a/k/a Digga, each being a person  
11 employed by and associated with the organization known today  
12 as the BGF Greenmount Regime, an enterprise, which engaged in  
13 and the activities of which affected interstate or foreign  
14 commerce, together with each other and with other persons  
15 known and unknown to the grand jury, did knowingly,  
16 intentionally, and unlawfully, combine, conspire, confederate,  
17 and agree to violate Section 1962(c) of Title 18, United  
18 States Code, that is, to conduct and participate, directly and  
19 indirectly, in the conduct of the enterprise's affairs through  
20 a pattern of racketeering activity, as defined in sections  
21 1961(1) and (5) of Title 18, United States Code, which pattern  
22 of racketeering activity consisted of multiple: A, acts  
23 involving murder; B, acts involving robbery; C, offenses  
24 involving trafficking in controlled substances, distribution  
25 of controlled substances and conspiracy to distribute

1 controlled substances; and D, multiple acts, i, relating to  
2 tampering with a witness, victim, or an informant; ii, of  
3 retaliating against witnesses, victims, and informants.

4 The defendants are charged with violating Section  
5 1962(d) of Title 18 of the United States Code. That section  
6 reads as follows: It shall be unlawful for any person to  
7 conspire, to violate any of the provisions of subsection A, B,  
8 or C of this section.

9 Subsection (c) to which I just referred, provides as  
10 follows: It shall be unlawful for any person employed by or  
11 associated with any enterprise engaged in, or the activities  
12 of which affect interstate or foreign commerce, to conduct or  
13 participate, directly or indirectly, in the conduct of such  
14 enterprise's affairs through a pattern of racketeering  
15 activity or collection of an unlawful debt.

16 The word "racketeering" has certain implications in  
17 our society. Use of that term in this statute and in this  
18 courtroom should not be regarded as having anything to do with  
19 your determination of whether the guilt of these defendants  
20 has been proven. The term is only a word used by Congress to  
21 describe the statute.

22 In order to prove that the defendants conspired to  
23 violate the Racketeer Influenced and Corrupt Organizations  
24 Act, the RICO Act, the government must establish beyond a  
25 reasonable doubt each of the following elements of the

1 offense: First, that there was an agreement among two or more  
2 persons to participate in an enterprise that would affect  
3 interstate commerce through a pattern of racketeering  
4 activity; second, that the defendant knowingly and willfully  
5 became a member of that agreement; and third, that the  
6 defendant or another member of the conspiracy agreed to commit  
7 two racketeering acts, as I will define that term for you.

8 As to Count 1, the first element that the government  
9 must establish beyond a reasonable doubt is that there was a  
10 conspiracy among two or more persons to participate in an  
11 enterprise that would affect interstate commerce through a  
12 pattern of racketeering activity.

13 As I have already explained, a conspiracy is an  
14 agreement among two or more persons to achieve an unlawful  
15 object. To show a conspiratorial agreement, the government is  
16 not required to prove that two or more people entered into a  
17 solemn pact, but only that two or more persons explicitly or  
18 implicitly came to an understanding to achieve the specified  
19 unlawful object, whether or not they were successful.

20 In this case, the unlawful act is the formation of  
21 an enterprise whose activities would affect interstate  
22 commerce through a pattern of racketeering activity. Let me  
23 define these terms for you.

24 An "enterprise" for the purposes of this case,  
25 includes a group of people who have associated together for a

1 common purpose of engaging in a course of conduct over a  
2 period of time. This group of people, in addition to having a  
3 common purpose, must have an ongoing organization, either  
4 formal or informal, and it must have personnel who function as  
5 a continuing unit. This group of people does not have to be a  
6 legally recognized entity, such as a partnership or  
7 corporation. This group may be organized for a legitimate and  
8 lawful purpose, or it may be organized for an unlawful  
9 purpose.

10 The government has charged in the indictment that  
11 the organization known today as the Black Guerilla Family's  
12 Greenmount Avenue Regime, formerly known as the Young Guerilla  
13 Family or YGF, including its leadership, members, and  
14 associates, constitutes the enterprise. If you find that this  
15 was a group of people characterized by one, a common purpose;  
16 two, an ongoing formal or informal organization; and three,  
17 personnel who functioned as a continuing unit, then you may  
18 find that an enterprise existed.

19 If you find that this enterprise existed, you must  
20 also determine whether this enterprise continued in an  
21 essentially unchanged form during substantially the entire  
22 period charged in the indictment. This does not mean everyone  
23 involved has to be the same, but the core of the enterprise  
24 has to be the same throughout.

25 "Interstate commerce" includes the movement of

1 goods, services, money, and individuals between states or  
2 between states and the District of Columbia or a U.S.  
3 territory or a possession or between the United States and a  
4 foreign state or nation.

5 As noted above, the government must prove that the  
6 enterprise engaged in interstate commerce or that its  
7 activities affected interstate commerce in any way, no matter  
8 how minimal. It does not have to prove that the racketeering  
9 activity affected interstate commerce, although proof that  
10 racketeering acts did affect interstate commerce is sufficient  
11 to satisfy this element. It is not necessary to prove that  
12 the acts of any particular defendant affected interstate  
13 commerce as long as the acts of the enterprise had such  
14 effect. Finally, the government is not required to prove that  
15 any defendant knew he was affecting interstate commerce.

16 As with the enterprise element, it is not required  
17 that the government prove that the enterprise actually  
18 affected interstate commerce as long as it proves beyond a  
19 reasonable doubt that if the object of the conspiracy had been  
20 achieved, the enterprise would have affected interstate  
21 commerce.

22 A "pattern of racketeering activity" requires the  
23 commission of two racketeering acts within ten years of each  
24 other. The indictment alleges that the following racketeering  
25 acts were or were intended to be committed as part of the

1 conspiracy: A, multiple acts involving: One, murder under  
2 state law; and two, robbery under state law; B, offenses  
3 involving: One, conspiracy to distribute a controlled  
4 substance and distribution of controlled substances under  
5 federal law; C, multiple acts indictable under: One, 18,  
6 United States Code, Section 1512, relating to tampering with a  
7 witness, victim, or an informant; two, 18, United States Code,  
8 Section 1513, retaliating against witnesses, victims, and  
9 informants.

10 To prove that the acts constituted a pattern of  
11 racketeering activity, the government must prove that the acts  
12 of racketeering are related to each other and that they pose a  
13 threat of continued criminal activity. It is not sufficient  
14 for the government to prove only that a member of the  
15 enterprise committed two of the racketeering acts I've just  
16 described. A series of disconnected acts does not constitute  
17 a pattern, and a series of disconnected crimes does not  
18 constitute a pattern of racketeering activity, nor do they  
19 amount to or pose a threat of continued racketeering activity.

20 To prove that the acts of racketeering are related,  
21 the government must prove that the acts had the same or  
22 similar purposes, results, participants, victims, or methods  
23 of commission, and that they are otherwise interrelated by  
24 distinguishing characteristics and are not isolated events.

25 To prove that the racketeering acts pose a threat of

1 continued racketeering activity, the government must establish  
2 that the acts are part of a long-term association that exists  
3 for criminal purposes.

4 The second element the government must prove beyond  
5 a reasonable doubt is that the defendant knowingly and  
6 willfully became a member of the conspiracy charged in the  
7 indictment. You were already instructed on membership in a  
8 conspiracy.

9 Finally, as to Count 1, the third element the  
10 government must prove beyond a reasonable doubt is that the  
11 defendant or another member of the conspiracy agreed to commit  
12 two racketeering acts.

13 The focus of this element is on the defendant's  
14 agreement to participate in the objective of the enterprise to  
15 engage in a pattern of racketeering activity and not on the  
16 defendant's agreement to commit the individual criminal acts.  
17 The government must prove that the defendant participated in  
18 some manner in the overall objective of the conspiracy, and  
19 that the conspiracy involved, or would have involved, the  
20 commission of two racketeering acts. The government is not  
21 required to prove either that the defendant agreed to commit  
22 two racketeering acts or that he actually committed two such  
23 acts, although you may conclude that he agreed to participate  
24 in the conduct of the enterprise from proof that he agreed to  
25 commit or actually committed such acts.

1 For the purposes of this count, the indictment  
2 alleges that the following racketeering acts were or were  
3 intended to be committed as a part of the conspiracy: A,  
4 multiple acts involving: One, murder under state law; and  
5 two, robbery under state law. B, offenses involving: One,  
6 conspiracy to distribute a controlled substance and  
7 distribution of controlled substances under federal law. C,  
8 multiple acts indictable under: One, 18, United States Code,  
9 Section 1512, relating to tampering with a witness, victim, or  
10 an informant; two, 18, United States Code, Section 1513,  
11 retaliating against witnesses, victims, and informants.

12 In order for the state offenses of murder and  
13 robbery to be considered as racketeering acts, the government  
14 must prove to you beyond a reasonable doubt that the offenses  
15 were or were intended to be committed as part of the  
16 conspiracy.

17 The elements of these offenses are as follows: A,  
18 first degree murder is the intentional killing of another  
19 person with willfulness, deliberation, and premeditation. The  
20 elements of this offense are: One, that the defendant caused  
21 the death of the victim; two, that the killing was willful,  
22 deliberate, and premeditated; three, that the killing was not  
23 justified; and four, that there were no mitigating  
24 circumstances.

25 "Willful" means that the defendant actually intended

1 to kill the victim. "Deliberate" means that the defendant was  
2 conscious of the intent to kill. "Premeditated" means that  
3 the defendant thought about the killing and that there was  
4 enough time before the killing, though it may only have been  
5 brief, for the defendant to consider the decision whether or  
6 not to kill and enough time to weigh the reasons for and  
7 against the choice. The premeditated intent to kill must be  
8 formed before the killing.

9 B, second degree murder is the killing of another  
10 person with either the intent to kill or the intent to inflict  
11 such serious bodily harm that death would be the likely  
12 result. Second degree murder does not require premeditation  
13 or deliberation. The elements of this offense are: One, that  
14 the defendant caused the death of the victim; and two, that  
15 the defendant engaged in the deadly conduct either with the  
16 intent to kill or with the intent to inflict such serious  
17 bodily harm that death would be the likely result.

18 C, attempted first degree murder is a substantial  
19 step, beyond mere preparation, towards the commission of  
20 murder in the first degree. The elements of this offense are:  
21 One, that the defendant took a substantial step, beyond mere  
22 preparation, toward the commission of murder in the first  
23 degree; two, that the defendant had the apparent ability, at  
24 that time, to commit the crime of murder in the first degree;  
25 and three, that the defendant willfully, and with

1 premeditation and deliberation, intended to kill the victim.

2 D, attempted second degree murder is a substantial  
3 step, beyond mere preparation, toward the commission of murder  
4 in the second degree. Second degree murder does not require  
5 premeditation or deliberation. The elements of this offense  
6 are that: One, the defendant took a substantial step, beyond  
7 mere preparation, toward the commission of murder in the  
8 second degree; two, that the defendant had the apparent  
9 ability at that time, to commit the crime of murder in the  
10 second degree; and three, that the defendant actually intended  
11 to kill the victim.

12 F, robbery is the taking and carrying away of  
13 property from someone else or from someone's presence and  
14 control, by force or threat of force, with the intent to  
15 deprive the victim of the property. The elements of  
16 robbery -- the elements of the offense are: One, that the  
17 defendant took the property from the victim or the victim's  
18 presence and control; two, that the defendant took the  
19 property by force or threat of force; and three, that the  
20 defendant intended to deprive the victim of the property.

21 "Property" means anything of value. "Deprive" means  
22 to withhold property of another permanently, for such a period  
23 as to appropriate a portion of its value, with the purpose of  
24 restoring it only upon payment of a reward or other  
25 compensation, or to dispose of the property and use or deal

1 with the property so as to make it unlikely that the owner  
2 will recover it.

3 G, robbery with a dangerous weapon. The elements of  
4 the crime of robbery with a dangerous weapon are all of the  
5 elements of robbery and that the defendant committed the  
6 robbery by using a dangerous weapon. A dangerous weapon is an  
7 object that is capable of causing death or serious bodily  
8 harm.

9 H, conspiracy to murder. The elements of conspiracy  
10 to commit murder are: One, that the defendant agreed with at  
11 least one other person to commit the crime of murder; and two,  
12 that the defendant entered into the agreement with the intent  
13 that the crime of murder be committed.

14 In order for the federal offenses of drug  
15 trafficking, tampering with witnesses, and retaliating against  
16 witnesses to be considered as racketeering acts, the  
17 government must prove to you beyond a reasonable doubt that  
18 the offenses were or were intended to be committed as part of  
19 the conspiracy. I will explain the elements of conspiracy to  
20 traffic narcotics when I explain Count 2 of the indictment.

21 The elements of the federal offenses of drug  
22 trafficking, tampering with witnesses, and retaliating against  
23 witnesses are as follows: A, the elements of possession with  
24 intent to distribute a controlled substance, in violation of  
25 21, United States Code, Section 841 are as follows: One, that

1 the defendant possessed a controlled substance; two, that the  
2 defendant knew he possessed a controlled substance; and three  
3 that the defendant possessed the controlled substance with the  
4 intent to distribute it.

5 The first element the government must prove beyond a  
6 reasonable doubt is that the defendant possessed a controlled  
7 substance. The legal concept of possession may differ from  
8 the every day usage of the term, so I will explain it in some  
9 detail. Actual possession is what most of us think of as  
10 possession; that is, having physical custody or control of an  
11 object. For example, if you find that a defendant had the  
12 drugs on his person, you may find that he had possession of  
13 the drugs.

14 However, a person need not have actual physical  
15 custody of an object in order to be in legal possession of it.  
16 If an individual has the ability to exercise substantial  
17 control over an object that he does not have in his physical  
18 custody, then he's in possession of that item. An example of  
19 this is from everyday experience would be a person's  
20 possession of items he keeps in the safe deposit box of his  
21 bank. Although the person does not have physical custody of  
22 those items, he exercises substantial control over them and so  
23 has what is known as constructive possession of them.

24 The law also recognizes that possession may be sole  
25 or joint. If one person alone possesses something, that is

1 sole possession. However, it is possible that more than one  
2 person may have the power and intention to exercise control  
3 over the drugs. This is called joint possession. If you find  
4 that the defendant had such power and intention, then he  
5 possessed the drugs under the element even if he possessed the  
6 drugs jointly with another.

7 Possession of the drugs cannot be found solely on  
8 the ground that a defendant was near or close to the drugs.  
9 Nor can it be found simply because a defendant was present at  
10 a scene where drugs were involved, or solely because a  
11 defendant associated with a person who does control the drugs  
12 or the property or where they are found. However, these  
13 factors may be considered by you, in connection with all the  
14 other evidence, in making your decision about whether a  
15 defendant possessed drugs.

16 The second element the government must prove beyond  
17 a reasonable doubt is that the defendant knew he possessed  
18 drugs. To establish this element, the government must prove  
19 that the defendant knew that he possessed drugs and that his  
20 possession was not due to carelessness, negligence, or  
21 mistake. If you find the defendant did not know that he had  
22 drugs in his possession, or that he didn't know that what he  
23 possessed was, in fact, drugs, then you must find the  
24 defendant not guilty.

25 Although the defendant must prove the defendant --

1 although the government must prove that the defendant knew he  
2 possessed drugs, the government does not have to prove the  
3 defendant knew the exact nature of the drugs in his  
4 possession. It is enough that the government proves the  
5 defendant knew he possessed some kind of drug.

6 The third element the government must prove is that  
7 the defendant possessed drugs with the intent to distribute  
8 them. To prove the third element, the government must prove  
9 beyond a reasonable doubt that the defendant had control over  
10 the drugs with the state of mind or purpose to transfer them  
11 to another person.

12 The same considerations that apply to your  
13 determination whether the defendant knew he possessed drugs  
14 apply to your decision concerning the defendant's intention to  
15 distribute them. Since you cannot read the defendant's mind,  
16 you must make inferences from his behavior. However, you may  
17 not convict a defendant unless these inferences convince you  
18 beyond a reasonable doubt that he intended to distribute the  
19 drugs.

20 When I say that you must find the defendant intended  
21 to distribute the drugs, this does not mean that you must find  
22 that the defendant intended personally to distribute or  
23 deliver the drugs. It is sufficient if you find the defendant  
24 intended to cause or assist the distribution of the drugs.

25 Basically, what you're determining is whether the

1       drugs in the defendant's possession were for his personal use  
2       or for the purpose of distribution. Often, it is possible to  
3       make this determination from the quantity of drugs found in  
4       the defendant's possession. For example, it would be highly  
5       unlikely that a person with 50,000 doses of amphetamine  
6       possessed them all for personal consumption.

7           The possession of a large quantity of drugs does not  
8       necessarily mean that the defendant intended to distribute  
9       them. On the other hand, a defendant may have bended to  
10      distribute drugs even if he did not possess a large -- large  
11      amounts of them. Other physical evidence, such as  
12      paraphernalia for the packaging or processing of drugs, can  
13      show such an intent. There might also be evidence of a plan  
14      to distribute. You should make your decision whether the  
15      defendant intended to distribute the drugs in his possession  
16      from all of the evidence presented.

17           The elements of distribution of a controlled  
18      substance, in violation of 21, United States Code, Section 841  
19      are as follows: One, that the defendant distributed a  
20      controlled substance; and two, that the defendant distributed  
21      the controlled substance knowingly.

22           The word "distribute" means to deliver a drug.  
23      "Deliver" is defined as the actual, constructive, or attempted  
24      transfer of a drug. Simply stated, the words "distribute" and  
25      "deliver" mean to pass on or to hand over to another or to

1 cause to be passed on or handed over to another or to try to  
2 pass on or hand over to another, drugs. For example, if A  
3 tells or orders B to hand over the drugs to C, then A has  
4 caused the drugs to be handed over, and therefore, has  
5 distributed them.

6 Distribution does not require a sale. Activities in  
7 furtherance of the ultimate sale, such as vouching for the  
8 quality of the drugs, negotiating for or receiving the price,  
9 and supplying or delivering the drugs, may constitute  
10 distribution. In short, distribution requires a concrete  
11 involvement in the transfer of the drugs.

12 The elements of the charge of tampering with a  
13 witness in violation of 18, United States Code, Section 1512  
14 are: One, that the defendant knowingly used physical force or  
15 the threat of physical force against the victim, or attempted  
16 to do so; and two, that the defendant acted knowingly and with  
17 the intent to hinder, delay, or prevent the communication to a  
18 law enforcement officer or judge of the United States of  
19 information relating to the commission or possible commission  
20 of a federal offense or a violation of conditions of  
21 probation, supervised release, parole, or release pending a  
22 federal judicial proceeding.

23 "Physical force" simply means physical action  
24 against another, and includes confinement of a person against  
25 his or her will. If you find that defendant acted with the

1 intent to hinder or prevent communication by a victim to a  
2 specific law enforcement officer or group of officers, this  
3 element is satisfied, if that officer or one of the group of  
4 officers is a federal law enforcement officer. A federal law  
5 enforcement officer is an officer or employee of the federal  
6 government who is authorized to act on the behalf of the  
7 federal government in the prevention, detection,  
8 investigation, or prosecution of federal crimes, or a  
9 probation or Pretrial Services officer.

10 The government is not required to prove that the  
11 defendant knew that the officer was a federal law enforcement  
12 officer. On the other hand, if you find that the defendant  
13 was not acting within the intent to prevent communication to a  
14 particular officer or group of officers, then this element is  
15 satisfied only if the government proves beyond a reasonable  
16 doubt that there was a reasonable likelihood that had the  
17 victim been able to communicate with law enforcement officers,  
18 at least one relevant communication would have been made to a  
19 federal law enforcement officer.

20 D, the elements of retaliating against a witness in  
21 violation of 18, U.S.C., Section 1513 are -- I said U.S.C.,  
22 that's United States Code, Section 1513, those elements are:  
23 First, that the defendant knowingly engaged in the conduct  
24 alleged in the indictment; two, that the defendant's conduct  
25 caused bodily injury to the victim; and three, that the

1 defendant acted with the intent to retaliate against the  
2 victim for information given relating to the commission of a  
3 federal offense to a law enforcement officer.

4 "Bodily injury" means a cut, abrasion, bruise, burn,  
5 or disfigurement, physical pain, illness, or the impairment of  
6 the function of a bodily member, organ, or mental facility.  
7 It includes any injury to the body no matter how temporary.  
8 In this regard, it is not necessary that the defendant himself  
9 caused the bodily injury. It is sufficient if you find that  
10 the defendant knowingly participated in some activity which  
11 had the consequence or effect of injuring the victim, nor is  
12 it necessary to prove that the victim was actually injured; it  
13 is sufficient if the defendant knowingly threatened to cause  
14 bodily injury to the victim.

15 A "threat" is simply the expression of an intention  
16 to do harm. A threat may be communicated by words as well as  
17 gestures. In order to find that the defendants threatened to  
18 cause the victim bodily harm, you need not find that he  
19 intended to carry out the threat.

20 A "law enforcement officer" means an officer or  
21 employee of the federal government authorized to prevent,  
22 investigate, or prosecute offenses, or who is serving as a  
23 probation officer. In this regard, the government must also  
24 prove that the defendant knew that the witness was cooperating  
25 with a federal law enforcement officer. In order to satisfy

1 this element, it is not necessary for the government to prove  
2 that the defendant knew he was breaking any particular law.

3 To conclude, I have now described for you the  
4 elements of the racketeering acts listed in the indictment.  
5 The government must prove that two of these acts were or were  
6 intended to be committed as part of the conspiracy, although  
7 it need not prove that a particular defendant committed or  
8 agreed to commit any of these acts as long as the government  
9 proves that defendant -- that a defendant participated in some  
10 manner in the overall objective of the conspiracy. The jury's  
11 verdict must be unanimous as to which type or types of  
12 predicate racketeering activity the defendant agreed would be  
13 committed; for example, at least two acts of extortion or  
14 robbery or drug trafficking or any combination thereof.

15 Ladies and gentlemen, I have now finished reading 81  
16 pages of jury instructions to you. There are 119 pages total.  
17 We are going to stop at this point, just before I begin to  
18 talk to you about Count 2. I have just finished my discussion  
19 of Count 1. But it's 5:41 in the evening, and accordingly, it  
20 is an appropriate time for us to stop. Tomorrow morning at  
21 9:30 you will reassemble and I will continue with the  
22 instructions at the point where I have left off.

23 Ladies and gentlemen, during this overnight recess,  
24 do not discuss this case with anyone. Do not discuss it with  
25 your fellow jurors. Do not discuss it with any of your

1 friends or family. Do not allow yourselves to be exposed to  
2 any news articles or reports that touch upon this case or the  
3 issues it presents or the participants in the trial. Avoid  
4 all contact of any kind with any of the participants in the  
5 trial. Do not make any independent investigation of the law  
6 or the facts relevant to the case. Do not conduct internet  
7 searches with respect to the issues presented or the persons  
8 participating in the trial. Do not consult external sources  
9 such as encyclopedias or dictionaries in reference to the  
10 issues and terms that have been presented to you here.

11                   Ladies and gentlemen, in a moment you will be taken  
12 to the jury room. There will be a brief delay before you are  
13 permitted to leave the jury room for the day solely because  
14 there has been another activity occurring in the courthouse  
15 today involving another case that has nothing to do with us or  
16 our proceeding that has involved the presence of a significant  
17 number of people. We're going to make sure those other  
18 participants with respect to that other matter are clear of  
19 the exit route so that your departure from the building is not  
20 impeded in any way, that the elevators are free and so forth.  
21 This happens sometimes when the courthouse gets busy and we  
22 have multiple proceedings going on at the same time. So you  
23 will be held in the jury room until Ms. Powell tells you that  
24 you are free to leave. I suspect it will only be a matter of  
25 a very few moments. Please take the jury out. You will

1 rejoin us at 9:30 tomorrow morning.

2 (Jury left the courtroom.)

3 THE COURT: The defendants are remanded to the  
4 custody of the Marshal and I'll ask the court security officer  
5 to stand by the courtroom door. No one will leave the  
6 courtroom door until I authorize their departure. Please take  
7 the defendants out.

8 (Pause in the proceedings.)

9 THE COURT: Be seated, please. Ms. Powell, please  
10 verify that all jurors and alternates have cleared the jury  
11 room, cleared the vestibule, and the area on the third floor,  
12 and that there is no one waiting for the elevators and report  
13 back.

14 All clear. Thank you. The court security officer  
15 will permit those who wish to leave to depart.

16 Mr. O'Toole, you wish to make a record with respect  
17 to certain exhibits. I understand that you and the government  
18 have got an agreement with respect to certain matters.

19 MR. O'TOOLE: I think we have and we reduced the  
20 number we had originally. I think I told the Court 15, we've  
21 reduced it in half. They fall in two categories, one is, for  
22 instance, when the government introduced social media and  
23 introduced a large number of pictures and we introduced one of  
24 those pictures, at say, page 42.

25 THE COURT: A carve out.

MR. O'TOOLE: A carve out. There are a couple others, ones that were not introduced at all by the government but introduced by us. The first one --

THE COURT: So what I would like you to do is, to first identify the item by the mistaken government exhibit number, and one item at a time, "This was mistakenly labeled as Government Exhibit 1A, I now request that it be labeled as Johnson Exhibit 1A."

MR. O'TOOLE: Fine.

THE COURT: Okay. Have you gone through this with the government?

MR. O'TOOLE: I don't think we have. We've gone through it with Mr. Martinez in general.

THE COURT: All right. We'll go one by one.

MR. O'TOOLE: First one is mistakenly introduced as Government Exhibit CP 2, page 1, and we wish to introduce that as Johnson Defense Exhibit No. 6.

THE COURT: Okay. Stand by and wait to hear from the clerk that she's got that correction made. Mr. Martinez, if you hear something you have an objection interpose it, otherwise, I'm going to assume the government has no objection. Mr. Martinez.

MR. MARTINEZ: Yes, I'm relying on Agent Christy to let me know.

THE COURT: Well --

1 THE CLERK: So that was CP 2, page 1, is Johnson  
2 6.

3 MR. O'TOOLE: Correct.

4 THE CLERK: Thank you.

5 MR. O'TOOLE: I'm waiting for the Court.

6 THE COURT: It could be a long wait, the way I'm  
7 feeling at the moment.

8 MR. O'TOOLE: You've been reading a long time. The  
9 next one is introduced as Government Exhibit SM 9 at page 13,  
10 and it should be called now Johnson Defense Exhibit 6A. With  
11 the Court's permission, I'll go forward.

12 THE COURT: As soon as the clerk verifies she has it  
13 and there has been no objection, move on to the next one.

14 MR. O'TOOLE: Next one is Government's Exhibit SM 9,  
15 page 12, should be Johnson Defense 6B. The next one is  
16 Government SM 9, page 23, should be Defense Johnson 6-C. The  
17 next one is Government Exhibit SM 9, page 44, should be  
18 Defense Exhibit -- Johnson Defense Exhibit 8-E, as in  
19 Edward.

20 THE CLERK: Yes, I'm sorry.

21 MR. O'TOOLE: The penultimate one is Government  
22 Exhibit PHI 20, should be Defense Johnson Exhibit No. 14. And  
23 finally, Government PHI 68 should be Defense Johnson 15.

24 THE CLERK: Got it.

25 MR. MARTINEZ: We have a problem.

1 THE COURT: Off the record.

2 (Pause in the proceedings.)

3 Back on the record -- hold it, stay off the record.

4 (Pause in the proceedings.)

5 We're back on the record. Mr. O'Toole.

6 MR. O'TOOLE: Your Honor, thank you. The very last  
7 one that I mentioned should be changed from Johnson Exhibit  
8 No. 15 to Johnson Exhibit -- Defense Exhibit No. 16.

9 THE COURT: Okay. So you're just switching the  
10 numbering on your exhibits, this doesn't reference the  
11 government. You said Johnson Exhibit 15, to Johnson Exhibit  
12 16.

13 MR. O'TOOLE: Correct, because we already had a  
14 15.

15 THE COURT: Ms. Powell.

16 THE CLERK: So -- okay. I have 15 as PHI 68.  
17 What's 16?

18 MR. O'TOOLE: 16 now is going to be PHI 68. I'm  
19 informed by the government that we already had labeled a  
20 Johnson Exhibit 15 as something else. I don't know what it is  
21 we had it labeled as.

22 MR. MARTINEZ: One of the Shoody on Duty exhibits,  
23 that's what we have our description as, Shoody on Duty.

24 THE CLERK: Okay. What I was given by the defense  
25 was that Shoody on Duty video is 10D.

1 THE COURT: 10D, as in dog.

2 MR. O'TOOLE: And that's what I've got on my list as  
3 well.

4 MR. MARTINEZ: So we have that as 15. We don't have  
5 a 10D.

6 THE COURT: Okay. Well, you don't have a 10D. All  
7 right. So Shoody on Duty will be 10D.

8 MR. MARTINEZ: Okay.

9 THE COURT: So that means there need be no change  
10 made with respect to Johnson Exhibit 15, it remains Johnson  
11 Exhibit 15. And there is no Johnson Exhibit 16.

12 MR. O'TOOLE: Correct.

13 THE COURT: Agreed, government?

14 MR. MARTINEZ: Yes.

15 THE COURT: Off the record.

16 (Pause in the proceedings.)

17 THE COURT: Back on the record. I misspoke a second  
18 ago when I indicated that when we left Johnson Exhibit 15  
19 alone, the implication of that was that there is no Johnson  
20 Exhibit 16. In fact, there is a Johnson Exhibit 15, which is?

21 THE CLERK: Government's PHI 68.

22 THE COURT: And there is a Johnson Exhibit 16, a  
23 record from Johns Hopkins Hospital, which was received in  
24 evidence the last couple of days; is that correct,  
25 Mr. O'Toole?

1 MR. O'TOOLE: Exactly.

2 THE COURT: Is that correct, Mr. Martinez?

3 MR. MARTINEZ: Yes.

4 THE COURT: So we have cleared up the issue of the  
5 misnumbering of exhibits.

6 MS. HOFFMAN: Not quite, Your Honor, I have two from  
7 the government's side I would like to correct.

8 THE COURT: Two on the government's side you'd like  
9 to correct. Let's go off the record.

10 (Pause in the proceedings.)

11 THE COURT: We're back on the record. Ms. Hoffman,  
12 do you have a request to amend the numbering labeling of  
13 exhibits?

14 MS. HOFFMAN: I do. What the government identified  
15 as Government's Exhibit SM 22 should be corrected to  
16 Government's Exhibit SM 28.

17 THE COURT: Hold on a second. Let the clerk catch  
18 up with you.

19 MS. HOFFMAN: I'm sorry, what I identified yesterday  
20 as SM Exhibit 22 should be corrected to Government's Exhibit  
21 SM 28.

22 THE CLERK: Thank you. And could I have a  
23 description of SM 28, please.

24 MS. HOFFMAN: I believe it was a photograph of  
25 Mr. Johnson's Facebook account of Mr. Johnson with Carrundai

1       Butler. I'm sorry, Mr. Johnson's Instagram account a photo of  
2       Mr. Johnson and Carrdai Butler.

3                   THE COURT: And Ms. Powell, that is now marked and  
4       received as exhibit?

5                   THE CLERK: SM 28. It was brought in as 22  
6       yesterday, but now it's SM 28.

7                   MS. HOFFMAN: That's right.

8                   THE COURT: Okay. Without objection from any  
9       defendant?

10                  MR. O'TOOLE: Correct, no objection.

11                  MR. FRANCOMANO: No objection.

12                  THE COURT: Next, Ms. Hoffman.

13                  MS. HOFFMAN: The next one is yesterday Detective  
14       Hayden identified a recording of a jail call between Wesley  
15       Brown and Marquise McCants on July 3rd of 2016. We played  
16       that recording, Detective Hayden identified it, I neglected to  
17       give it an exhibit number. It should be CD 18.

18                  THE COURT: Without objection, Mr. O'Toole?

19                  MR. O'TOOLE: No objection.

20                  MR. BUSSARD: No objection.

21                  MR. FRANCOMANO: No objection.

22                  THE COURT: It was received yesterday, it's now  
23       marked as received Exhibit CD 18.

24                  THE CLERK: Okay.

25                  THE COURT: All right. Any other issues with

1 respect to the labeling or numbering of exhibits? I have some  
2 more matters to address with respect to exhibits, but I want  
3 to make sure that any errors, mistakes, clarifications have  
4 been straightened out and we have no more concerns in that  
5 regard. First from the government.

6 MS. HOFFMAN: Nothing else from the government.

7 THE COURT: Mr. O'Toole.

8 MR. O'TOOLE: Nothing from us.

9 THE COURT: Mr. Bussard.

10 MR. BUSSARD: Yes, Your Honor, I do.

11 THE COURT: You have an exhibit issue.

12 MR. BUSSARD: There were three exhibits that were  
13 introduced as government's exhibits, when in fact they had not  
14 been introduced by the government. They were identified first  
15 as Government's PHCS 2, page 3. That should be marked Jones  
16 14 D.

17 THE COURT: Hold on a second, allow her to catch  
18 up.

19 THE CLERK: Okay. Thank you.

20 MR. BUSSARD: The next one is Government's PHCS 4,  
21 page 1, should be marked Jones 14E.

22 THE CLERK: PHCS 4, page 1, 14E.

23 MR. BUSSARD: 14E.

24 THE CLERK: Thank you.

25 MR. BUSSARD: And the last one is Government's PHI

1 50.

2 THE CLERK: 50; five, zero.

3 MR. BUSSARD: Yes. Should be Jones 14I.

4 THE COURT: Without objection, Mr. Martinez?

5 MR. MARTINEZ: Yes, Your Honor, no objection.

6 THE COURT: Those changes will be made. Those  
7 exhibits were all previously received while evidence was still  
8 open in the case. They're simply being corrected in their  
9 labeling and how they are marked and numbered. Anything else,  
10 Mr. Bussard?

11 MR. BUSSARD: Nothing further.

12 THE COURT: Mr. Francomano, any changes or  
13 modifications?

14 MR. FRANCOMANO: No, Your Honor.

15 THE COURT: Now we turn to the larger question of  
16 verifying the exhibits that have been received in the case.  
17 In a complex trial like this, my practice is to ask the  
18 courtroom deputy clerk to prepare the final record  
19 electronically of the exhibits that have been received in  
20 evidence and then print that document and enter it into the  
21 record itself as a court exhibit. I think in this case it's  
22 Court Exhibit No. 1.

23 It will only be received by the Court after I have  
24 received the agreement from all parties that it is in all  
25 respects correct. So that's the normal exhibit verification

1 process that has to happen. That can happen tonight, right  
2 now, or you can come in early tomorrow and accomplish it  
3 before we're scheduled to start at 9:30 I would envision 8:50  
4 to 9:00 o'clock, somewhere in that range. I'm perfectly happy  
5 to do it tonight if counsel are. The reporter may strangle  
6 me, but there's six feet and a substantial barrier separating  
7 us, so I think I'm okay.

8 MR. O'TOOLE: If we're voting, I would vote to  
9 receive the printout copy, meet up with Mr. Enzinna, and then  
10 come in early tomorrow at 8:50 or whatever you want.

11 THE COURT: All right. Well, that's perfectly fine.  
12 If we have one objection, that's good enough for me. So I'll  
13 ask Ms. Powell to produce printed copies of what is  
14 tentatively the official record of the exhibits that were  
15 received in this case, provide a copy to each of the lawyers,  
16 and then you can meet among yourselves and then perhaps you  
17 could meet with each other even before court tomorrow. But  
18 let's say you'll plan to assemble here, let's say between 9:00  
19 and 9:15, to -- unless you know of a big problem, which I  
20 assume we're not going to have, between 9:00 and 9:15.  
21 Ms. Powell will be here. And you'll advise her of whether  
22 you've got an issue that needs to be worked out and hopefully  
23 you can come to some agreement on that. Then the first order  
24 of business on the record tomorrow will be to confirm the  
25 status of exhibits so that we're smooth and ready to go with

1 respect to the jury once they retire.

2 The second thing that has to be resolved in that  
3 connection is among those received exhibits, which are going  
4 back to the jury room, obviously no guns, no ammo. Spent  
5 shell casings, that sort of thing, that's fine, that can go  
6 back. No live ammo, no controlled substances, and no gory  
7 photos. So how do you decide what's a gory photo or not?  
8 Well, try to remember whether or not I gave a -- that  
9 millennial term "trigger warning," is that the right word?  
10 Whether I gave a trigger warning, which is what I was told by  
11 my wife I was doing in this trial, if I give a trigger  
12 warning, then that means that should not go back to the jury  
13 room. If they request to see it, probably we would let the  
14 picture goes back. If they request to see a firearm or  
15 ammunition or a controlled substance, they can be brought back  
16 into the courtroom and it can published to them by being  
17 displayed in front of them, not passed among them.

18 MR. O'TOOLE: Would be -- if I could inquire, would  
19 that be each time you said we're about to see autopsy  
20 pictures, would all those pictures then be triggers?

21 THE COURT: Yes, basically any gory -- any autopsy  
22 photo and any photo of someone, a person or a body qualifies.  
23 Now, crime scenes like the Country crime scene with blood  
24 spilling down the steps, no, that's fine, that goes back  
25 without qualification. I'm talking about actual bodies lying

1 there. Okay.

2 MR. MARTINEZ: Recordings, Your Honor?

3 THE COURT: We have no capacity by which to play  
4 recordings in the jury room. So obviously, I mean, if you  
5 want to, put the CDs in a box to show them so they can sit  
6 there and be reminded by the fact, oh, yeah, there's a CD, I  
7 don't have any problem there, but there isn't going to be any  
8 way for them to play that in the jury room. And if they come  
9 back to us and say, hey, we've got these recordings, we want  
10 to play them, you know, I'll consider the request. I'm not  
11 going to prejudge any jury question or its answer. But in  
12 general what my practice has been if they want to hear a  
13 replay of jail calls or whatever, we bring them back in, we  
14 queue it up without any comment, we play it, send them back  
15 out. We don't have the equipment and I already relayed to you  
16 my anecdote to all of you about that.

17 MR. MARTINEZ: Your Honor, my only question was so  
18 long as they're aware that they're available to be played, in  
19 the event that they want to hear something, whatever the Court  
20 wants to do is fine.

21 THE COURT: Yes, well, if the way you want to  
22 emphasize that is by putting them in a box and having all your  
23 CDs sitting there and have it go back to the jury room, I  
24 don't have any problem with that.

25 MR. MARTINEZ: Okay.

1 THE COURT: Okay. So what my goals are for tomorrow  
2 is to have all of these instruction issues straightened out  
3 and this court exhibit ready to be received as the official  
4 record of what was received in this case and what was -- will  
5 also show what was marked for identification but not received.  
6 And I don't remember any exhibits being -- were exhibits  
7 rejected, offered but refused? I don't remember any, but it  
8 would reflect that as well. And then the second thing I want  
9 to be ready for is, once the jury goes, a relatively fast  
10 process of pulling together those exhibits that are going to  
11 go into the jury room. So that's another thing to be clear on  
12 hopefully before we start at 9:30 tomorrow. Here's the cart,  
13 here's the stack of stuff. So maybe you ought to be here at  
14 9:00 o'clock, 9:00 o'clock to get all that accomplished.

1 pointing at this, it's -- why not take advantage of the  
2 technology? The point is for the Court to walk through the  
3 verdict form with the jury, we're going to use the technology  
4 to do it and see if that works. All right. That's  
5 everything -- oh, I'll see counsel at the bench.

6 (Bench conference on the record.)

7 THE COURT: We're back on the record, we're convened  
8 at the bench. I took the measures I took with respect to the  
9 jury this evening out of an abundance of caution to make sure  
10 that there wasn't any inappropriate intercepting of persons in  
11 the vestibule or on the third floor of the building. It's not  
12 out of any specific particularized concern, it's just that the  
13 trial has entered now a very critical phase and I want to make  
14 sure that we're taking all reasonable steps to make sure that  
15 we don't have any inappropriate contact. So that's the  
16 explanation for what happened.

17 Yes, the story about the other proceeding was  
18 technically true in that there was another big case going on,  
19 but I will own the fact that it was also a bit of a ruse and  
20 that was designed to completely desensitize the jury to the  
21 notion that something was being done for their protection so  
22 as to not prejudice them.

23 Tomorrow my expectation is that the jury will be --  
24 we will supply them with lunch, they'll stay in the jury room.  
25 Beginning at -- when they begin to deliberate after that, they

1 will only be allowed out of the jury room into the hallways  
2 outdoors to smoke or whatever in the company of a court  
3 security officer. They will not be free at lunch to walk  
4 through the neighborhood or anything along those lines. And  
5 that's the procedure that we'll attain if this goes into, you  
6 know, another day, multiple days of deliberation. That's how  
7 we'll do it.

8 The other thing is, that if they are excused at the  
9 end of the day tomorrow without reaching a verdict, we will  
10 follow the same measures that I have just described. And I  
11 will tell you that we have taken some other very subtle  
12 security measures on the property of the courthouse and in the  
13 surrounding neighborhood in terms of parking garages and so  
14 forth. Everyone that's involved in that is in plain clothes,  
15 there's no obvious police presence, but we are taking some  
16 measures in that regard, and we'll follow them again tomorrow  
17 night.

18 If the jury is excused without reaching a verdict,  
19 upon their actually reaching a verdict and the trial being  
20 completely over and the jury having been discharged, we will  
21 personally escort them to their vehicles, as they may request.  
22 That's obviously a far less malignant situation in terms of  
23 prejudice. Anybody got any questions about the procedures  
24 that the Court's following?

25 MR. O'TOOLE: I do.

1 THE COURT: Yes.

2 MR. O'TOOLE: I'm curious if these measures you're  
3 taking are because of anything the Court has heard because  
4 of --

5 THE COURT: Nothing more than the Court having dealt  
6 with some feedback from jurors on prior occasions where they  
7 expressed apprehension, particularly after the fact,  
8 feedback's come back to the Court that, you know, they wanted  
9 to know, well, were any measures being taken to look out for  
10 us, whether we knew about them at the time and so forth. It  
11 occurred to myself and my colleagues that a matter of sort of  
12 good customer service and prudent security and so forth,  
13 provided we're not crossing any lines in terms of prejudice,  
14 so the trick is put reasonable security measures in place, but  
15 don't do it in such a way that it somehow suggests to the  
16 jurors that they need them. And so it's really no more than  
17 that.

18 MR. O'TOOLE: So there was nothing -- there's  
19 nothing -- anything new since the last time you heard about  
20 the jury about their own personal safety?

21 THE COURT: There really isn't. It's more  
22 influenced by experiences and getting feedback that we see  
23 after previous racketeering conspiracy -- murder and  
24 racketeering conspiracy trial.

25 MR. O'TOOLE: Thank you, Your Honor.

1                   THE COURT: Trying to, you know, strike the right  
2 balance, hit that sweet spot, and you know, a lot of competing  
3 interests. Any questions?

4                   MR. O'TOOLE: No questions.

5                   THE COURT: Okay. So 9:00 o'clock tomorrow to deal  
6 with exhibits, 9:30 to continue with the jury charge. We're  
7 off the record.

8                   (The proceedings were concluded.)

9  
10                  I, Christine Asif, RPR, FCRR, do hereby certify that  
11 the foregoing is a correct transcript from the stenographic  
12 record of proceedings in the above-entitled matter.

13                  \_\_\_\_\_/s/\_\_\_\_\_  
14                  Christine T. Asif  
15                  Official Court Reporter  
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